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Presidential Documents

Title 3—

The President

Proclamation 10176 of April 9, 2021

National Former Prisoner of War Recognition Day, 2021

By the President of the United States of America

A Proclamation

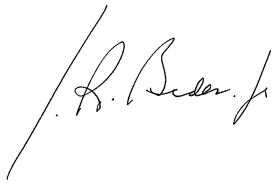
Throughout our Nation's history, those who have served in our Armed Forces have steadfastly stood in defense of the United States and of freedom throughout the world. Although countless courageous service members and civilians have given their lives for our Nation, more than half a million others have sacrificed their own freedom as prisoners of war so the cause of liberty always prevails.

Enduring with limitless dignity and determination, these former prisoners of war are a powerful reminder that their indomitable spirit could not be broken, even by brutal treatment in contravention of international law and morality. Despite the terrible suffering inflicted upon them by their captors in harsh prisons and camps in Europe and Asia, American prisoners of war steadfastly demonstrated their devotion to duty, honor, and country.

On this day and every day, let us honor all who have borne the hardships of captivity in service to our Nation, remember the brave men and women who were held as prisoners in foreign lands during our Nation's past conflicts, and recognize those at home who anxiously awaited their loved ones' return. Their faith in God, love of family, and trust in our Nation are an inspiration to all Americans, and we will always remember their sacrifices.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 9, 2021, as National Former Prisoner of War Recognition Day. I call upon all Americans to observe this day by honoring the service and sacrifice of all former prisoners of war as our Nation expresses its eternal gratitude for their sacrifice. I also call upon Federal, State, and local government officials and organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of April, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2021–07755
Filed 4–13–21; 8:45 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 14023 of April 9, 2021

Establishment of the Presidential Commission on the Supreme Court of the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the Presidential Commission on the Supreme Court of the United States (Commission).

Sec. 2. *Membership.* (a) The Commission shall be composed of not more than 36 members appointed by the President.

(b) Members of the Commission shall be distinguished constitutional scholars, retired members of the Federal judiciary, or other individuals having experience with and knowledge of the Federal judiciary and the Supreme Court of the United States (Supreme Court).

(c) The President shall designate two members of the Commission to serve as Co-Chairs.

Sec. 3. *Functions.* (a) The Commission shall produce a report for the President that includes the following:

(i) An account of the contemporary commentary and debate about the role and operation of the Supreme Court in our constitutional system and about the functioning of the constitutional process by which the President nominates and, by and with the advice and consent of the Senate, appoints Justices to the Supreme Court;

(ii) The historical background of other periods in the Nation's history when the Supreme Court's role and the nominations and advice-and-consent process were subject to critical assessment and prompted proposals for reform; and

(iii) An analysis of the principal arguments in the contemporary public debate for and against Supreme Court reform, including an appraisal of the merits and legality of particular reform proposals.

(b) The Commission shall solicit public comment, including other expert views, to ensure that its work is informed by a broad spectrum of ideas.

(c) The Commission shall submit its report to the President within 180 days of the date of the Commission's first public meeting.

Sec. 4. *Administration.* (a) The Office of Administration within the Executive Office of the President shall provide funding and administrative support for the Commission to the extent permitted by law and within existing appropriations. To the extent permitted by law, including the Economy Act (31 U.S.C. 1535), and subject to the availability of appropriations, the General Services Administration shall provide administrative services, including facilities, staff, equipment, and other support services as may be necessary to carry out the objectives of the Commission.

(b) Members of the Commission shall serve without compensation for their work on the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(c) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (Act), may apply to the Commission, any functions of the President

under the Act, except for those in section 6 of the Act, shall be performed by the Administrator of General Services.

Sec. 5. *Termination.* The Commission shall terminate 30 days after it submits its report to the President.

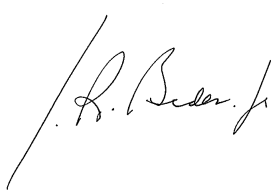
Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
April 9, 2021.

[FR Doc. 2021–07756
Filed 4–13–21; 8:45 am]
Billing code 3295–F1–P

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0305; Project Identifier AD–2021–00334–R; Amendment 39–21512; AD 2021–08–18]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–04–16 which applied to certain Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters. AD 2021–04–16 required a one-time inspection of the landing gear for components with non-conforming threads and removal of any non-conforming threaded hinge pin and main landing gear (MLG) and nose landing gear (NLG) actuator pins. AD 2021–04–16 also prohibited installing certain part-numbered hinge and actuator pins on any helicopter. This AD requires the same actions but corrects erroneous part numbers. This AD was prompted by the discovery that certain part numbers listed in AD 2021–04–16 are incorrect. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 29, 2021

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of April 14, 2021 (86 FR 13631, March 10, 2021).

The FAA must receive any comments on this AD by June 1, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact your local Sikorsky Field Representative or Sikorsky's Service Engineering Group at Sikorsky Aircraft Corporation, Mailstop K100, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–946–4337 (1–800–Winged–S); email *wcs_cust_service_eng.gr-sik@lmco.com.* Operators may also log on to the Sikorsky 360 website at *https://www.sikorsky360.com.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0305.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0305; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dorie Resnik, Aviation Safety Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7693; fax: (781) 238–7199; email: *dorie.resnik@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued AD 2021–04–16, Amendment 39–21438 (86 FR 13631, March 10, 2021) (AD 2021–04–16), for Sikorsky Model S–92A helicopters with serial numbers (S/Ns) 920006 through 920334 inclusive. AD 2021–04–16 required a one-time inspection of the landing gear and the removal from service of certain serial-numbered threaded hinge pins part number (P/N) 92250–12281–101 and certain serial-numbered MLG and NLG actuator pins P/N 92250–12287–101 and 92250–12287–103. AD 2021–04–16 was prompted by the manufacturer discovering nonconforming threads, resulting in a life limit reduction on multiple landing gear components including threaded hinge pins and MLG and NLG actuator pins. The FAA issued AD 2021–04–16 to prevent failure of components on the MLG and NLG. The unsafe condition, if not addressed, could result in damage to the helicopter and reduced ability to control the helicopter during landing.

Actions Since AD 2021–04–16 Was Issued

Since the FAA issued AD 2021–04–16, it was discovered that the P/Ns for the actuator pins were incorrect in certain paragraphs. Portions of the Required Actions paragraph incorrectly identified the actuator pin P/Ns as 92240–12287–101 and 92240–12287–103; the correct P/Ns are 92250–12287–101 and 92250–12287–103. The Installation Prohibition paragraph incorrectly identified the actuator pin P/Ns as 92240–12287–101 and 92240–12287–103; the correct P/Ns are 92250–12287–101 and 92250–12287–103. The FAA is issuing this AD to correct these P/N errors and address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Sikorsky Alert Service Bulletin 92–32–008, Basic Issue, dated January 21, 2020 (the ASB). The ASB describes procedures for a one-time inspection and replacement of non-conforming components on the MLG and NLG.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

AD Requirements

This AD requires, within 300 hours time-in-service (TIS) after the effective date of this AD, visually inspecting the components of the right MLG assembly, left MLG assembly, and NLG kit for threaded hinge pins P/N 92250–12281–101 and actuator pins P/N 92250–12287–101 and 92250–12287–103 with an S/N as specified in the ASB. If there is any threaded hinge pin P/N 92250–12281–101 or any MLG or NLG actuator pin P/N 92250–12287–101 or P/N 92250–12287–103 with an S/N as specified in the ASB, removing it from service is required before further flight. This AD also prohibits, as of the effective date of this AD, installing any threaded hinge pin P/N 92250–12281–101 or actuator pin P/N 92250–12287–101 or 92250–12287–103 with an S/N as specified in the ASB, on any helicopter.

Differences Between This AD and the Service Information

This AD requires replacing only affected hinge pins and MLG and NLG actuator pins. The ASB requires replacing additional parts such as the MLG and NLG crossbolt and the MLG and NLG upper nut. The FAA has determined that the MLG and NLG crossbolt and the MLG and NLG upper nut fail in a safe and contained manner and therefore are not subject to this AD.

Additionally, this AD requires the one-time inspection within 300 hours TIS after the effective date of this AD and requires that any affected hinge pins and MLG and NLG actuator pins be removed from service before further flight. The ASB specifies inspecting and replacing the affected hinge pins and MLG and NLG actuator pins occur no later than January 21, 2021.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

This AD corrects an obvious error in AD 2021–04–16 that affects compliance and the public was previously provided opportunity for comment on the costs of the AD and required actions.

Accordingly, notice and opportunity for prior public comment are unnecessary pursuant to 5 U.S.C. 553(b)(3)(B). In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0305 and Project Identifier AD–2021–00334–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7693; fax: (781) 238–7199; email: *dorie.resnik@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 85 helicopters of U.S. registry and estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Visually inspect landing gear (right MLG assembly, left MLG assembly, and NLG kit).	1 work-hour × $85 per hour = $85 (per landing gear).	$0	$255 (three landing gear installed on each helicopter).	$21,675

The FAA estimates the following costs to do any necessary replacements that are required based on the results of the inspection. The FAA has no way of determining the number of helicopters that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace threaded hinge pin, P/N 92250–12281–101	1 work-hour × $85 per hour = $85	$4,535	$4,620
Replace MLG/NLG actuator pin, P/N 92250–12287–101	1 work-hour × $85 = $85	557	642
Replace MLG/NLG actuator pin, P/N 92250–12287–103	1 work-hour × $85 = $85	609	694

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all costs in its cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–04–16, Amendment 39–21438 (86 FR 13631, March 10, 2021); and

■ b. Adding the following new airworthiness directive:

2021–08–18 Sikorsky Aircraft Corporation (Sikorsky): Amendment 39–21512; Docket No. FAA–2021–0305; Project Identifier AD–2021–00334–R

(a) Effective Date

This airworthiness directive (AD) is effective April 29, 2021.

(b) Affected ADs

This AD replaces AD 2021–04–16, Amendment 39–21438 (86 FR 13631, March 10, 2021) (AD 2021–04–16).

(c) Applicability

This AD applies to Sikorsky Model S–92A helicopters, certificated in any category, with serial numbers (S/Ns) 920006 through 920334 inclusive.

(d) Subject

Joint Aircraft System Component (JASC) Code 3220, Nose/Tail Landing Gear and 3210, Main Landing Gear.

(e) Unsafe Condition

This AD was prompted by the discovery that certain part numbers listed in AD 2021–04–16 were incorrect. AD 2021–04–16 was issued after the manufacturer determined that because of non-conforming threads, due to a quality escape, the life limit of the threaded hinge pin and main landing gear (MLG) and nose landing gear (NLG) actuator pins was reduced. The FAA is issuing this AD to correct the errors in AD 2021–04–16 and prevent failure of components on the MLG and NLG. The unsafe condition, if not addressed, could result in damage to the helicopter and reduced ability to control the helicopter during landing.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

Within 300 hours time in service after the effective date of this AD, visually inspect the components of the right MLG assembly, left MLG assembly, and NLG kit for threaded hinge pins part number (P/N) 92250–12281–101 and actuator pins P/N 92250–12287–101 and P/N 92250–12287–103 with S/Ns identified in Table 1 or 2 (threaded hinge pins) or in Table 1 (actuator pins), in Section 3, the Accomplishment Instructions, in the Sikorsky Aircraft Corporation Alert Service Bulletin 92–32–008, Basic Issue, dated January 21, 2020 (the ASB).

Note 1 to the introductory text of paragraph (g): See Figures 1 and 2 in Section 3, the Accomplishment Instructions, in the ASB for guidance on performing the visual inspection.

(1) If there is any threaded hinge pin, P/N 92250–12281–101, with an S/N listed in Table 1 or 2 in the ASB, before further flight, remove the threaded hinge pin from service.

(2) If there is any MLG or NLG actuator pin, P/N 92250–12287–101 or P/N 92250–12287–103, with an S/N listed in Table 1 in the ASB, before further flight, remove the actuator pin from service.

(h) Installation Prohibition

As of the effective date of this AD, do not install any threaded hinge pin 92250–12281–101 or actuator pin, P/N 92250–12287–101 or 92250–12287–103 with an S/N listed in Table 1 or 2 in Section 3, the Accomplishment Instructions, in the ASB, on any helicopter.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

For more information about this AD, contact Dorie Resnik, Aviation Safety Engineer, Boston ACO Branch, Compliance & Airworthiness Division, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7693; fax: (781) 238–7199; email: *dorie.resnik@faa.gov.*

(k) Material Incorporated by Reference

(1) The Director of the Federal Register previously approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on April 14, 2021 (86 FR 13631, March 10, 2021).

(i) Sikorsky Aircraft Corporation Alert Service Bulletin 92–32–008, Basic Issue, dated January 21, 2020.

(ii) [Reserved]

(4) For Sikorsky Aircraft Corporation service information identified in this AD, contact your local Sikorsky Field Representative or Sikorsky's Service Engineering Group at Sikorsky Aircraft Corporation, Mailstop K100, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–946–4337 (1–800-Winged-S); email *wcs_cust_service_eng.gr-sik@lmco.com.* Operators may also log on to the Sikorsky 360 website at *https://www.sikorsky360.com.*

(5) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on April 9, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–07687 Filed 4–12–21; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2020–0513]

RIN 1625–AA09

Drawbridge Operation Regulation; River Rouge, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the National Steel Corporation Railroad Bridge, mile 0.40, the Delray Connecting Railroad Bridge, mile 0.34, and the Delray Connecting Railroad Bridge, mile 0.80, over the River Rouge. Delray Connecting Railroad Company, the owner and operator of these three bridges, has requested to stop continual drawtender service and to operate the two bridges only while trains are crossing the bridge, leaving them in the open position at all other times, while the third bridge would open upon signal if a 4-hour advance notice is received.

DATES: This rule is effective May 14, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov.* Type USCG–2020–0513 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email: Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
IGLD85 International Great Lakes Datum of 1985
LWD Low Water Datum based on IGLD85
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On October 27, 2020 we published in the ***Federal Register*** *(85 FR 68019) a Notice of Proposed Rule Making.* There we stated why we issued the NPRM, and invited comments on our proposed regulatory action. During the 60-day comment period, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The National Steel Corporation Railroad Bridge, mile 0.40, the Delray Connecting Railroad Bridge, mile 0.34, and the Delray Connecting Railroad Bridge, mile 0.80, over the River Rouge, currently open on signal pursuant to 33 CFR 117 and are required to be manned by a drawtender at each bridge. The reason for the request to stop continual drawtender service it that the primary customer, a still mill on Zug Island, has been placed into caretaker status, significantly decreasing the rail traffic across these bridges.

IV. Discussion of Comments, Changes and the Final Rule

We did not receive any comments from the waterway users.

V. Discussion of Final Rule

The proposed rule will establish the procedures to move the bridge to allow rail traffic to cross the bridge while giving notice to the vessels transiting the waterway that the bridge will be lowering. Ten minutes before the bridge is lowered for train traffic a crewmember from the train will initiate a SECURITE call on VHF–FM Marine Channel 16 that the bridge will be lowering for train traffic and invite any concerned mariners to contact the drawtender on VHF–FM Marine Channel 12. The drawtender will also visually monitor for vessel traffic and listen for the standard bridge opening signal of one prolonged blast and one short blast from vessels already transiting the waterway. After the ten minute warning, one last SECURITE call will be made that the bridge will be lowering for rail traffic five minutes before lowering. Once the drawtender is satisfied that it is safe the bridge will be lowered for rail traffic. Once the rail traffic has cleared the bridge, the bridge will be raised and locked in the fully open to navigation position.

The Delray Connecting Railroad Bridge, mile 0.34, has had limited requests for openings and provides access to Zug Island for vehicles and rail traffic. The owner of the railroad states the bridge has been operating with advance notice illegally without complaints for several years.

VI. Regulatory Analyses

The Coast Guard has developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt

from the requirements of Executive Order 13771.

This regulatory action determination is based on the ability that vessels can still transit the bridge because the bridge will only be lowered for train traffic or the bridge will open with advance notice.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; DHS Delegation No. 0170.1.

■ 2. Revise § 117.645 to read as follows:

§ 117.645 River Rouge.

(a) The Delray Connecting Railroad Bridge, mile 0.34, need not have a drawtender in continued attendance at the bridge and shall open on signal if a 4-hour advance notice is provided.

(b) The Delray Connecting Railroad Bridge, mile 0.80, over the Old Channel need not have a drawtender in continued attendance at the bridge. The bridge will remain open ten minutes before the bridge is lowered for train traffic. A crewmember from the train will initiate a SECURITE call on VHF–FM Marine Channel 16 that the bridge will be lowering for train traffic and invite any concerned mariners to contact the drawtender on VHF–FM Marine Channel 12. The drawtender will also visually monitor for vessel traffic and listen for the standard bridge opening signal of one prolonged blast and one short blast from vessels already transiting the waterway. After the ten minute warning, another SECURITE call shall be made on VHF–FM Marine Channel 16 that the bridge will be lowering for rail traffic five minutes before lowering. Once the drawtender is satisfied that it is safe, the bridge will be lowered for rail traffic. Once the rail traffic has cleared the bridge, the bridge shall be raised and locked in the fully open to navigation position.

(c) The National Steel Corporation Railroad Bridge, mile 0.40, need not have a drawtender in continual attendance at the bridge. Ten minutes before the bridge is lowered for train

traffic a crewmember from the train will initiate a SECURITE call on VHF–FM Marine Channel 16 that the bridge will be lowering for train traffic and invite any concerned mariners to contact the drawtender on VHF–FM Marine Channel 12. The drawtender will also visually monitor for vessel traffic and listen for the standard bridge opening signal of one prolonged blast and one short blast from vessels already transiting the waterway. After the ten minute warning, another SECURITE call shall be made on VHF–FM Marine Channel 16 that the bridge will be lowering for rail traffic five minutes before lowering. Once the drawtender is satisfied that it is safe, the bridge will be lowered for rail traffic. Once the rail traffic has cleared the bridge, the bridge shall be raised and locked in the fully open to navigation position.

(d) The draw of the Conrail Bridge, mile 1.48, is remotely operated, is required to operate a radiotelephone, and shall open on signal.

Dated: April 2, 2021.

D.L. Cottrell,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2021–07649 Filed 4–13–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2020–0037; FRL–10022–22–OAR]

Air Quality Designations for the 2010 Sulfur Dioxide (SO_2) Primary National Ambient Air Quality Standard—Round 4—Supplemental Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is withdrawing the initial nonattainment designation for portions of the Outagamie County, Wisconsin, area for the 2010 sulfur dioxide (SO_2) primary National Ambient Air Quality Standard (NAAQS) and is finalizing a designation of attainment/unclassifiable for the area. The EPA Administrator signed an action on December 21, 2020, to designate certain areas in the United States (U.S.) for the 2010 SO_2 NAAQS, including the Outagamie County area. This action supplements the EPA's December 2020 designations, published in the **Federal Register** of March 26, 2021, which have not yet taken effect.

DATES: This final rule is effective on April 30, 2021.

ADDRESSES: The EPA has established a docket for this action at *https://regulations.gov* under Docket ID No. EPA–HQ–OAR–2020–0037. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are currently closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. The Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For general questions concerning this action, please contact Andrew Leith, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, 109 T.W. Alexander Drive, Mail Code C539–04, Research Triangle Park, NC 27711, telephone (919) 541–1069, email address: *leith.andrew@epa.gov.* For questions regarding the specific area in this action, please contact Alisa Liu, U.S. Environmental Protection Agency Region 5, Control Strategies Section, Air Programs Branch (AR–18J), 77 West Jackson Boulevard, Chicago, IL 60604; telephone: (312) 353–3193; email address: *liu.alisa@epa.gov.*

Most EPA offices are closed to reduce the risk of transmitting COVID–19, but staff remain available via telephone and email. The EPA encourages the public to review information related to the Round 4 2010 SO_2 NAAQS designations online at *https://www.epa.gov/sulfur-dioxide-designations* and also in the public docket at *https://www.regulations.gov* under Docket ID No. EPA–HQ–OAR–2020–0037.

SUPPLEMENTARY INFORMATION:

Table of Contents

The following is an outline of the Preamble.

I. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

APA Administrative Procedure Act
AQS Air Quality System
CAA Clean Air Act
CFR Code of Federal Regulations
DC District of Columbia
DRR Data Requirements Rule
E.O. Executive Order
EPA Environmental Protection Agency
FR Federal Register
NAAQS National Ambient Air Quality Standards
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
ppb Parts per billion
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
SO_2 Sulfur Dioxide
TAR Tribal Authority Rule
UMRA Unfunded Mandate Reform Act of 1995
U.S. United States

II. What is the purpose of this supplemental action?

The EPA was under a December 31, 2020, court-ordered deadline to designate all remaining areas for the 2010 SO_2 NAAQS (''Round 4''). On December 21, 2020, the EPA Administrator signed a final action to designate 44 areas in accordance with section 107(d) of the Clean Air Act (CAA).[1] Nine areas were designated as

[1] The Round 4 2010 SO_2 NAAQS designations action was signed by the EPA Administrator, Andrew Wheeler, on December 21, 2020, pursuant to a court-ordered deadline of December 31, 2020. That document with the original signature and date

nonattainment; two areas were designated as unclassifiable; and 33 areas were designated as attainment/unclassifiable. The list of newly designated areas in each state, the boundaries of each area, and the designation of each area, appear in the tables at the end of that action.

The purpose of this supplemental action is to withdraw the SO_2 designation for one area that the EPA designated as nonattainment in the December 2020 action and designate that area as attainment/unclassifiable. The EPA indicated in that action that if any state submitted complete, quality-assured, certified 2020 data to the appropriate EPA Regional office supporting a change of the designation status for any Round 4 area within that state, and the EPA agreed that a change of designation status was appropriate, the EPA would withdraw the December 21, 2020, designation for the area and issue another designation that reflects the analysis of such information.

The EPA received such 2020 air quality information from the state of Wisconsin on January 13, 2021, and this information is available in the docket for this action. Based on our evaluation of the 2020 monitoring data, in this supplemental action the EPA is changing its December 21, 2020, nonattainment designation for portions of Outagamie County, Wisconsin to attainment/unclassifiable. The portions of Outagamie County affected by this change cover Outagamie County except Oneida Township (which includes Oneida Reservation), Oneida Off-Reservation Trust Land, and noncontiguous portions of Seymour Township adjoining Oneida Nation Tribal Lands.[2]

The December 21, 2020, action was based on application of the EPA's nationwide analytical approach and technical analysis, including evaluation of monitoring data and air quality modeling, to determine the appropriate designation and area boundary based on the weight of evidence for each area, which are hereby incorporated by reference into this supplement of that action. Modification to the December 21, 2020, designation for this area does not represent a ''redesignation'' because this change is a withdrawal of that initial designation prior to its effective date and is an issuance of a new initial designation. The EPA is making this change to reflect the most recent 3 years of complete, quality-assured, and certified data (*i.e.,* 2018–2020) that have become available prior to the April 30, 2021, effective date of the December 21, 2020, action.

III. Designation Decision Based on 2018–2020 Data

In a May 1, 2020, letter, which the state later modified on July 17, 2020, the Wisconsin Department of Natural Resources (WDNR) recommended that the EPA designate Outagamie County, Wisconsin as nonattainment for the 2010 SO_2 NAAQS. On August 13, 2020, consistent with section 107(d)(1)(b)(ii) of the CAA, the EPA notified Wisconsin that it intended to designate portions of Outagamie County, Wisconsin as nonattainment based on the most recent 3 years (2017–2019), at that time, of complete, quality-assured, certified data from a monitor (Air Quality System (AQS) Site ID #55–087–0015) indicating a violation of the 2010 SO_2 NAAQS with a design value of 77 parts per billion (ppb).[3] The EPA explained in its December 2020 Responses to Comments on the intended designations (*see* pp. 26–27) that if the Kaukauna SO_2 monitor produced a valid attaining design value for the 2018–2020 period, and Wisconsin submitted the certified data to the EPA prior to February 15, 2021, then the EPA would withdraw the nonattainment designation announced in the December 2020 action and change the initial designation of the Outagamie County area to attainment/unclassifiable.[4]

On January 13, 2021, the WDNR submitted complete, quality-assured, and certified SO_2 air quality monitoring data from the Kaukauna monitor for calendar year 2020 to the EPA.[5] Additionally, WDNR requested that the EPA use the most recently available data to change the designation of Outagamie County, Wisconsin from nonattainment to attainment/unclassifiable prior to the April 30, 2021 effective date of the December 2020 action.

The Kaukauna monitor is located 1.53 kilometers north northeast of the Ahlstrom-Munksjö NA Specialty Solutions, LLC—Kaukauna facility. The monitor was sited to characterize the maximum 1-hour SO_2 concentration in the area surrounding the facility. Based on the ambient monitoring data certified by WDNR in the EPA's AQS, the annual 99th percentiles for the daily maximum 1-hour SO_2 concentrations are 107.8 ppb for 2018, 32.3 ppb 2019, and 66.7 ppb for 2020. Data collected at this monitor show a valid, attaining 1-hour SO_2 design value of 69 ppb based on complete, certified 2018–2020 data. The design value was calculated according to the data handling procedures in 40 CFR part 50, Appendix T, and is valid for comparison to the NAAQS.

Based on complete, quality-assured and certified air quality monitoring data from 2020 submitted by WDNR, showing attainment of the 1-hour SO_2 primary NAAQS in the area, the EPA is changing the initial designation for this area. As noted in Section II of this notice, the EPA provided a process in the December 2020 action for considering 2020 air quality data if such data supported a change to the initial designation for an area. Pursuant to this process, the EPA is withdrawing the initial nonattainment designation for portions of Outagamie County, Wisconsin, and the EPA is changing the initial designation of these portions of Outagamie County to attainment/unclassifiable, thereby designating the entirety of Outagamie County as attainment/unclassifiable. Procedurally, this change in the initial designation is consistent with the EPA's early data certification and evaluation process, as described previously in this document and in the December 2020 action. The table at the end of this document (amendment to 40 CFR 81.350) lists the only area for which the EPA is changing the initial designation.

IV. Effective Date of This Action

The effective date of designation of the area addressed in this action is April 30, 2021, the same effective date as the December 21, 2020, final designations action. The EPA is making these changes without notice and comment in accordance with section 107(d)(2) of the CAA, which exempts the promulgation of these designations from the notice and comment provisions of the

is maintained by the EPA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, Acting Administrator Jane Nishida re-signed the same action on March 10, 2021, for publication (86 FR 16055, March 26, 2021). The administrative process in no way alters the legal effect of the action upon publication in the **Federal Register**.

[2] In the December 2020 action, the EPA designated Oneida Township (which includes the Oneida Reservation), Oneida Off-Reservation Trust Land, and the noncontiguous portions of Seymour Township adjoining Oneida Nation Tribal Lands as attainment/unclassifiable. *See* the EPA's intended designations technical support document for Wisconsin at *https://www.epa.gov/sites/production/files/2020–08/documents/11-wi-rd4_intended_so2_designations_tsd.pdf.*

[3] The 2010 1-hour SO_2 NAAQS is 75 ppb, based on the 3-year average of the 99th percentile of the annual distribution of daily maximum 1-hour average concentrations. See 40 CFR 50.17.

[4] Response to Comments on EPA's Intended Designations for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard (NAAQS)—Round 4, December 2020. Available at *https://www.epa.gov/sites/production/files/2020-12/documents/rd4_so2_designations_responses_to_comments_final_v2.pdf.*

[5] The docket for this action includes WDNR's AMP600 and AMP450NC Data Certification Reports dated January 7, 2021, and Letter dated January 13, 2021, and the EPA's Concurrence dated January 19, 2021.

Administrative Procedure Act (APA). Section 553(d) of the APA generally provides that rulemakings shall not be effective less than 30 days after publication except where the agency finds good cause for an earlier date. 5 U.S.C. 553(d)(1) and (3). Were the EPA not to expedite the effective date of this action, and instead make the effective date 30 days after publication, there would be confusion regarding the appropriate designation for the affected area in Wisconsin, and the state and the EPA would likely have to expend unnecessary time and resources at a later time to resolve that confusion. The effective date for this action is, therefore, justified because the EPA finds that there is good cause to make the rule effective April 30, 2021, because it is in the public interest to avoid the potential delay and waste of resources associated with allowing the designations in the December 21, 2020, action to go into effect for this area, and the rule does not contain new requirements for which affected entities need time to prepare.

V. Comments Received Regarding the EPA's Round 4 Designations

During the 120-day notification period for the fourth round of designations, WDNR submitted comments, observing that SO_2 concentrations at the Kaukauna monitor have decreased since 2018. WDNR predicted that the 2018–2020 design value would be below the 2010 SO_2 NAAQS based on more recent data through September 2020 and suggested that this would potentially make finalization of a nonattainment designation unnecessary. If final quality assured data from the Kaukauna monitor at the end of 2020 showed a 2018–2020 design value that meets the 2010 1-hour SO_2 NAAQS, WDNR stated that it intended to early certify the 2020 data and request that the EPA change the initial designation for Outagamie County. The EPA did not receive any other comments regarding the Outagamie County, Wisconsin area during the 30-day public comment period.

VI. Environmental Justice Concerns

When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. Area designations address environmental justice concerns by ensuring that the public is properly informed about the air quality in an area. In locations where air quality does not meet the NAAQS, the CAA requires relevant state authorities to initiate appropriate air quality management actions to ensure that all those residing, working, attending school, or otherwise present in those areas are protected, regardless of minority and economic status.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget because it responds to the CAA requirement to promulgate air quality designations after promulgation of a new or revised NAAQS.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action fulfills the non-discretionary duty for the EPA to promulgate air quality designations after promulgation of a new or revised NAAQS and does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

This designation action under CAA section 107(d) is not subject to the RFA. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. Section 107(d)(2)(B) of the CAA explicitly provides that designations are exempt from the notice-and-comment provisions of the APA. In addition, designations under CAA section 107(d) are not among the list of actions that are subject to the notice-and-comment rulemaking requirements of CAA section 307(d).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments, or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the state, on the relationship between the national government and the state, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the federal government and the state for purposes of implementing the NAAQS is established under the CAA.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Government

This action does not have tribal implications, as specified in Executive Order 13175. This action concerns the designation of certain areas in the U.S. for the 2010 SO_2 NAAQS. The CAA provides for states, territories, and eligible tribes to develop plans to regulate emissions of air pollutants within their areas, as necessary, based on the designations. The Tribal Authority Rule (TAR) provides tribes the opportunity to apply for eligibility to develop and implement CAA programs, such as programs to attain and maintain the SO_2 NAAQS, but it leaves to the discretion of the tribe the decision of whether to apply to develop these programs and which programs, or appropriate elements of a program, the tribe will seek to adopt. This rule does not have a substantial direct effect on one or more Indian tribes. It would not create any additional requirements beyond those of the SO_2 NAAQS. This rule establishes the designations for certain areas of the country for the 2010 SO_2 NAAQS, but no areas of Indian country are being designated as nonattainment by this action. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the TAR establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this rule, after the EPA promulgated the 2010 primary SO_2 NAAQS, the EPA communicated with tribal leaders and environmental staff regarding the designations process. In 2011, the EPA also sent individualized letters to all federally recognized tribes to explain the designation process for the 2010 SO_2 NAAQS, to provide the EPA designations guidance, and to offer consultation with the EPA. The EPA provided further information to tribes through presentations at the National Tribal Forum and through participation in National Tribal Air Association conference calls. The EPA also sent individualized letters to all federally recognized tribes that submitted recommendations to the EPA about the EPA's intended Round 1 designations for the SO_2 standard and offered tribal leaders the opportunity for

consultation.[6] These communications provided opportunities for tribes to voice concerns to the EPA about the general designations process for the 2010 SO_2 NAAQS, as well as concerns specific to a tribe, and informed the EPA about key tribal concerns regarding designations as the designations process was under development and through its implementation up to that point. For the second, third, and fourth rounds of SO_2 designations, the EPA sent additional letters to tribes that could potentially be affected and offered additional opportunities for participation in the designations process.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this determination is contained in Section VI of this action, ''Environmental Justice Concerns.''

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the U.S. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).

To the extent a court finds this action locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1).[7] As explained in this document, this final action withdrawing the designation and promulgating a new initial designation of one area for the 2010 SO_2 primary NAAQS supplements the nationally applicable December 2020 final action taken by the EPA to issue a fourth round of designations for areas across the U.S., located in 21 states, nine EPA regions, and 10 federal judicial circuits, for the 2010 SO_2 primary NAAQS.[8] The December 21, 2020, signed action and this supplemental action, replacing the initial designation of one area in the December 21, 2020, signed action prior to the effective date of that action, are promulgated pursuant to a common, nationwide analytical method and interpretation of CAA section 107(d). In other words, this supplemental action applies the same uniform, nationwide analytical method and interpretation of CAA section 107(d) applied across the country in the December 2020 final action, including the EPA's nationwide analytical approach to and technical analysis of evaluating monitoring data and air quality modeling within the EPA's interpretation of statutory terms in the CAA such as the definitions of nonattainment, attainment, and unclassifiable under section 107(d)(1) of the CAA. Both the supplemental action and the December 21, 2020, action are based on this same common core of determinations regarding the nationwide analytical method and interpretation of CAA section 107(d), and the Administrator previously made and published a finding in the December 2020 final action that such action is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1).[9] More specifically, this final action is based on a determination by the EPA to evaluate areas nationwide under a common five factor analysis in determining whether areas are in violation of the 2010 SO_2 NAAQS, as follows: 1. Air quality characterization via ambient monitoring and/or dispersion modeling results; 2. emissions-related data; 3. meteorology; 4. geography and topography; and 5. jurisdictional boundaries.[10]

For these reasons, the Administrator is exercising the complete discretion afforded to him by the CAA and hereby finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is hereby publishing that finding in the **Federal Register**.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of

[6] These communication letters to the tribes are provided in the dockets for Round 1 (Docket ID No. EPA–HQ–OAR–2012–0233), Round 2 (Docket ID NO. EPA–HQ–OAR–2014–0464), and Round 3 (Docket ID NO. EPA–HQ–OAR–2017–0003).

[7] In deciding whether to invoke the exception by making and publishing a finding that this final action is based on a determination of nationwide scope or effect, the Administrator has also taken into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

[8] The rulemaking docket, EPA–HQ–OAR–2020–0037, is the same docket for both the December 21, 2020, signed action and for this supplemental action, with the relevant difference being that in addition to the materials it contained regarding this Wisconsin area generated through December 21, 2020—the date that action was signed by the Administrator—it now also contains the supplemental information submitted by Wisconsin related to this area.

[9] In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. *See* H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

[10] *See* ''Area Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard—Round 4,'' memorandum to Regional Air Division Directors, Regions 1–10, from Peter Tsirigotis, dated September 5, 2019, available at *https://www.epa.gov/sites/production/files/2019-09/documents/round_4_so2_designations_memo_09-05-2019_final.pdf.*

Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of the action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR part 81 as follows:

PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.350, the table titled ''Wisconsin—2010 Sulfur Dioxide NAAQS [Primary]'' is amended by removing the entry for ''Outagamie County (part)'', and removing the entry for ''Outagamie County (remainder)'' and adding an entry for ''Outagamie County'' in its place.

The addition reads as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN–2010 SULFUR DIOXIDE NAAQS

[Primary]

Designated area [1]	Designation	
	Date [2]	Type
* * * * *		
Outagamie County	4/30/2021	Attainment/Unclassifiable.
* * * * *		

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

[2] This date is April 9, 2018, unless otherwise noted.

[3] Includes Indian country of the tribe listed in this table located in Forest County, Wisconsin. Information pertaining to areas of Indian country in this table is intended for Clean Air Act planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. EPA lacks the authority to establish Indian country land status, and is making no determination of Indian country boundaries, in this table.

* * * * *

[FR Doc. 2021–07574 Filed 4–13–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2021–0003; Internal Agency Docket No. FEMA–8675]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur. Information identifying the current participation status of a community can be obtained from FEMA's CSB available at *www.fema.gov/flood-insurance/work-with-nfip/community-status-book.* Please note that per Revisions to Publication Requirements for Community Eligibility Status Information Under the National Flood Insurance Program, notices such as this one for scheduled suspension will no longer be published in the **Federal Register** as of June 2021 but will be available at National Flood Insurance Community Status and Public Notification | *FEMA.gov.* Individuals without internet access will be able to contact their local floodplain management official and/or State NFIP Coordinating Office directly for assistance.

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 674–1087. Details regarding updated publication requirements of community eligibility status information under the NFIP can be found on the CSB section at *www.fema.gov.*

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives, new and substantially improved construction, and development in general from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with NFIP regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date listed in the third column. As of that date, flood

insurance will no longer be available in the community. FEMA recognizes communities may adopt and submit the required documentation after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. Their current NFIP participation status can be verified at anytime on the CSB section at *fema.gov*.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the published FIRM is indicated in the fourth column of the table. No direct federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region 9				
California:				
Carson, City of, Los Angeles County	060107	November 26, 1974, Emerg; September 29, 1978, Reg; April 21, 2021, Susp.	April 21, 2021 ...	April 21, 2021.
Culver City, City of, Los Angeles County.	060114	July 11, 1975, Emerg; February 1, 1980, Reg; April 21, 2021, Susp.	.....do *	do.
Los Angeles, City of, Los Angeles County.	060137	June 19, 1970, Emerg; December 2, 1980, Reg; April 21, 2021, Susp.	.....do	do.
Manhattan Beach, City of, Los Angeles County.	060138	March 6, 1975, Emerg; May 8, 1978, Reg; April 21, 2021, Susp.	.....do	do.
Palos Verdes Estates, City of, Los Angeles County.	060145	January 29, 1971, Emerg; September 7, 1984, Reg; April 21, 2021, Susp.	.....do	do.
Rancho Palos Verdes, City of, Los Angeles County.	060464	August 26, 1974, Emerg; September 7, 1984, Reg; April 21, 2021, Susp.	.....do	do.
Santa Monica, City of, Los Angeles County.	060159	September 8, 1975, Emerg; April 30, 1982, Reg; April 21, 2021, Susp.	.....do	do.

* do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Eric J. Letvin,

Deputy Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2021–07663 Filed 4–13–21; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 9

[PS Docket No. 07–114; FCC 20–98; FR ID 21092]

Wireless E911 Location Accuracy Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of compliance date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved information collections associated with certain rules adopted in the *Wireless E911 Location Accuracy Requirements* proceeding. The Commission also announces that compliance with the rules is now required. The Commission also removes paragraphs advising that compliance was not required until OMB approval was obtained. This document is consistent with the 2020 Sixth Report and Order and rules, which state the Commission will publish a document in the **Federal Register** announcing a compliance date for the rule sections and revise the rules accordingly.

DATES:

Effective date: This rule is effective April 14, 2021.

Compliance dates: Compliance with 47 CFR 9.10(i)(2)(ii)(J)(*4*), (i)(4)(iv) and (v), (j)(4), and (k) published at 85 FR 53234 on September 28, 2020, and corrected at 85 FR 70500 on November 5, 2020, is required April 14, 2021.

FOR FURTHER INFORMATION CONTACT: John A. Evanoff, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418–0848, or email: *john.evanoff@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that OMB approved the information collection requirements in 47 CFR 9.10(i)(2)(ii)(J)(*4*), (i)(4)(iv) and (v), (j)(4), and (k).

The Commission publishes this document as an announcement of the compliance date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, regarding OMB Control Numbers 3060–1210. Please include the relevant OMB Control Number in your correspondence. The Commission will also accept your comments via the internet if you send them to *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on April 9, 2021, for the information collection requirements contained in the Commission's rules at 47 CFR 9.10(i)(2)(ii)(J)(*4*), (i)(4)(iv) and (v), (j)(4), and (k).

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1210.

OMB Approval Date: April 9, 2021.

OMB Expiration Date: April 30, 2024.

Title: Wireless E911 Location Accuracy Requirements (PS Docket No. 07–114).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, State, Local or Tribal Government, and Federal Government.

Number of Respondents and Responses: 4,567 respondents; 35,531 responses.

Estimated Time per Response: 2–10 hours.

Frequency of Response: Recordkeeping, on occasion; one-time; quarterly and semi-annual reporting requirements, and third-party disclosure requirements.

Obligation to Respond: Statutory authority for this information collection is contained in 47 U.S.C. 1, 2, 4(i), 7, 10, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 139,461 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is requesting that respondents submit confidential information to the Commission in the context of the test bed. Nationwide Commercial Mobile Radio Service (CMRS) providers must make data from the test bed available to small and regional CMRS providers so that the smaller providers can deploy technology throughout their networks that is consistent with a deployment that was successfully tested in the test bed. CMRS providers also may request confidential treatment of live 911 call data reports, but the Commission reserves the right to release aggregate or anonymized data on a limited basis to facilitate compliance with its rules.

Needs and Uses: This notice pertains to multiple information collections relating to the Commission's wireless E911 indoor location accuracy regulations. As described below, OMB previously approved the information collections associated with OMB Control No 3060–1210. This notice announces OMB approval of information collections adopted pursuant to the *Sixth Report and Order.* Section 9.10(i)(4)(iv) requires all CMRS providers to certify ''that neither they nor any third party they rely on to obtain dispatchable location information will use dispatchable location information or associated data for any non-911 purpose, except with prior express consent or as otherwise required by law.'' In addition, ''[t]he certification must state that CMRS providers and any third party they rely on to obtain dispatchable location information will implement measures sufficient to safeguard the privacy and security of dispatchable location information.'' Under 47 CFR 9.10(i)(4)(v), all CMRS providers must certify ''that neither they nor any third party they rely on to obtain z-axis information will use z-axis information or associated data for any non-911 purpose, except with prior express consent or as otherwise required by law.'' Further, ''[t]he certification must state that CMRS providers and any third

party they rely on to obtain z-axis information will implement measures sufficient to safeguard the privacy and security of z-axis location information.'' The Commission obtained OMB approval for the information collections contained in these certifications after adopting the Fourth Report and Order and Fifth Report and Order under OMB Control No. 3060–1210. The Sixth Report and Order modified these information collections slightly by deleting references to the National Emergency Address Database (NEAD), which has been discontinued and will not be available to CMRS providers. The Commission does not expect these changes to the certification requirements to result in any increase or decrease in the burden estimates for these collections as previously approved by OMB.

Section 9.10(i)(3)(ii) requires CMRS providers that serve any of the six Test Cities identified by ATIS (Atlanta, Denver/Front Range, San Francisco, Philadelphia, Chicago, and Manhattan Borough of New York City) or portions thereof to collect and report aggregate data on the location technologies used for live 911 calls. In 2018, the Commission developed a reporting template to assist CMRS providers in collecting, formatting, and submitting aggregate live 911 call data in accordance with the requirements in the rules. After adopting the Fifth Report and Order, the Commission indicated that it would modify the live call template to include vertical location. The Commission has now modified the form to include z-axis (vertical) location information from live calls in addition to horizontal location information. Specifically, the form now includes fields for reporting the percentage of total 911 calls that result in dispatchable location or z-axis location information by morphology and position technology and for reporting z-axis deployment options used for 911 calls.

Section 9.10(j)(4) requires CMRS providers to supply confidence and uncertainty (C/U) information with wireless E911 calls that have dispatchable location or z-axis information and to do so in accordance with the timelines for vertical location accuracy compliance. As noted below, OMB previously approved and renewed a C/U data requirement for horizontal location information under OMB Control No. 3060–1204. (See also OMB Control No. 3060–1147.) The Fifth Report and Order extended the C/U requirements to include vertical location information, and OMB approved that modification. The Sixth Report and Order revised 47 CFR 9.10(j)(4) to add a requirement that where floor-level information is available to CMRS providers, they must provide C/U data for the z-axis (vertical) information included with such floor-level information.

Under Section 9.10(k), CMRS providers must record information on all live 911 calls, including the C/U data that they provide to PSAPs under Section 9.10(j) of the rules. In addition, Section 9.10(k) requires CMRS providers to make this information available to PSAPs upon request and to retain it for a period of two years. The Commission obtained OMB approval for the information collections contained in Section 9.10(k) after adopting the Fourth Report and Order. The Sixth Report and Order amended Section 9.10(k) to make explicit that the requirements in the rule extend to C/U data for dispatchable location and floor-level information, as well as for z-axis information. This eliminated a potential gap in the rule, which previously referred only to z-axis information.

Section 9.10(i)(2)(ii)(J)(*4*) provides that a CMRS provider will be deemed to have met its z-axis technology deployment obligation so long as it either pre-installs or affirmatively pushes the location technology to end users so that they receive a prompt or other notice informing them that the application or service is available and what they need to do to download and enable the technology on their phone. A CMRS provider will be deemed in compliance with its z-axis deployment obligation if it makes the technology available to the end user in this manner even if the end user declines to use the technology or subsequently disables it. This is a new collection adopted by the Commission in the Sixth Report and Order.

Previously Approved Collections

Section 9.10(i)(2)(ii)(A) requires that within three years of the effective date of the rule, CMRS providers shall deliver uncompensated barometric pressure data from any device capable of delivering such data to PSAPs. This requirement is necessary to ensure that PSAPs are receiving all location information possible to be used for dispatch. This requirement is also necessary to ensure that CMRS providers implement a vertical location solution in the event that the proposed ''dispatchable location'' solution does not function as intended by the three-year mark and beyond.

Section 9.10(i)(2)(ii)(B) requires that the four nationwide providers submit to the Commission for review and approval a reasonable metric for z-axis (vertical) location accuracy no later than 3 years from the effective date of rules. This requirement is critical to ensure that the vertical location framework adopted in the Fourth Report and Order is effectively implemented.

Section 9.10(i)(2)(iii) requires CMRS providers to certify compliance with the Commission's rules at various benchmarks throughout implementation of improved location accuracy. This requirement is necessary to ensure that CMRS providers remain ''on track'' to reach the location accuracy benchmarks.

Section 9.10(i)(2)(iv) provides that PSAPs may seek Commission enforcement of the location accuracy requirements within their geographic service area, but only so long as they have implemented policies that are designed to obtain all location information made available by CMRS providers when initiating and delivering 911 calls to the PSAP. Prior to seeking Commission enforcement, a PSAP must provide the CMRS provider with 30 days written notice, and the CMRS provider shall have an opportunity to address the issue informally. If the issue has not been addressed to the PSAP's satisfaction within 90 days, the PSAP may seek enforcement relief.

Section 9.10(i)(3)(i) requires that within 12 months of the effective date, the four nationwide CMRS providers must establish the test bed described in the Fourth Report and Order, which will validate technologies intended for indoor location. The test bed is necessary for the compliance certification framework adopted in the Fourth Report and Order.

Section 9.10(i)(3)(ii) requires that beginning 18 months from the effective date of the rules, CMRS providers providing service in any of the six Test Cities identified by ATIS (Atlanta, Denver/Front Range, San Francisco, Philadelphia, Chicago, and Manhattan Borough of New York City) or portions thereof must collect and report aggregate data on the location technologies used for live 911 calls. Nationwide CMRS providers must submit call data on a quarterly basis; non-nationwide CMRS providers need only submit this data every six months. Non-nationwide providers that do not provide service in any of the Test Cities may satisfy this requirement by collecting and reporting data based on the largest county within the carrier's footprint. This reporting requirement is necessary to validate and verify the compliance certifications made by CMRS providers.

The Commission developed a reporting template to assist CMRS providers in collecting, formatting, and submitting aggregate live 911 call data

in accordance with the requirements in the rules. The template will also assist the Commission in evaluating the progress CMRS providers have made toward meeting the 911 location accuracy benchmarks. The template is an Excel spreadsheet and will be available for downloading on the Commission's website. The Commission may also develop an online filing mechanism for these reports in the future.

Section 9.10(i)(3)(iii) requires CMRS providers to retain testing and live call data gathered pursuant to this section for a period of 2 years.

Section 9.10(i)(4)(i) provides that no later than 18 months from the effective date of the adoption of the rule, nationwide CMRS providers shall report to the Commission their initial plans for meeting the indoor location accuracy requirements of paragraph (i)(2) of Section 9.10. Non-nationwide CMRS providers will have an additional 6 months to submit their implementation plan.

Section 9.10(i)(4)(ii) requires that no later than 18 months from the effective date, each CMRS provider shall submit to the Commission a report on its progress toward implementing improved indoor location accuracy. Non-nationwide CMRS providers will have an additional 6 months to submit their progress reports. All CMRS providers shall provide an additional progress report no later than 36 months from the effective date of the adoption of this rule. The 36-month reports shall indicate what progress the provider has made consistent with its implementation plan.

Section 9.10(i)(4)(iii) requires that prior to activation of the NEAD but no later than 18 months from the effective date of the adoption of this rule, the nationwide CMRS providers shall file with the Commission and request approval for a security and privacy plan for the administration and operation of the NEAD.

Section 9.10(i)(4)(iv) requires CMRS providers to certify ''that neither they nor any third party they rely on to obtain dispatchable location information will use dispatchable location information or associated data for any non-911 purpose, except with prior express consent or as otherwise required by law.'' In addition, ''[t]he certification must state that CMRS providers and any third party they rely on to obtain dispatchable location information will implement measures sufficient to safeguard the privacy and security of dispatchable location information.'' As noted above, the Commission is revising this requirement to account for the fact that the NEAD has been discontinued.

Section 9.10(i)(4)(v) requires that prior to use of z-axis information to meet the Commission's location accuracy requirements, CMRS providers must certify ''that neither they nor any third party they rely on to obtain z-axis information will use z-axis information or associated data for any non-911 purpose, except with prior express consent or as otherwise required by law.'' Further, ''[t]he certification must state that CMRS providers and any third party they rely on to obtain z-axis information will implement measures sufficient to safeguard the privacy and security of z-axis location information.'' This requirement is necessary to ensure the privacy and security of any personally identifiable information that may be collected by the CMRS provider. As noted above, the Commission is revising this requirement to account for the fact that the NEAD has been discontinued.

Section 9.10(j) requires CMRS providers to provide standardized confidence and uncertainty (C/U) data for all wireless 911 calls, whether from outdoor or indoor locations, on a per-call basis upon the request of a PSAP. This requirement makes the use of C/U data easier for PSAPs.

Section 9.10(j)(4) also requires that upon meeting the timeframes pursuant to paragraphs (i)(2)(ii)(C) and (D) of this section, CMRS providers shall provide with wireless 911 calls that have dispatchable location or z-axis (vertical) information the C/U data required under paragraph (j)(1) of this section. Where available to the CMRS provider, floor level information must be provided with associated C/U data in addition to z-axis location information.

Section 9.10(k) requires CMRS providers to record information on all live 911 calls, including but not limited to the positioning source method used to provide a location fix associated with the call, as well as confidence and uncertainty data. This information must be made available to PSAPs upon request, as a measure to promote transparency and accountability for this set of rules.

List of Subjects in 47 CFR Part 9

Communications common carriers, Communications equipment, Radio.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 9 as follows:

PART 9—911 REQUIREMENTS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471, unless otherwise noted.

§ 9.10 [Amended]

■ 2. Amend § 9.10 by removing paragraph (s).

[FR Doc. 2021–07723 Filed 4–12–21; 4:15 pm]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 86, No. 70
Wednesday, April 14, 2021

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 15

Office of the Secretary

43 CFR Part 30

[212A2100DD/AAKC001030/A0A501010.999900 253G]

RIN 1094–AA55

American Indian Probate Regulations

AGENCY: Bureau of Indian Affairs, Office of the Secretary, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Department of the Interior (Department) proposed revisions to its regulations governing probate of property that the United States holds in trust or restricted status for American Indians. We are reopening the comment period to effectively extend original March 8, 2021 comment deadline. Any comments received after the original March 8, 2021 comment deadline and before the new comment deadline will be accepted as timely submitted. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

DATES: The comment period for the proposed rule published January 7, 2021 (86 FR 1037), is reopened. Submit written comments by April 29, 2021.

ADDRESSES: You may submit comments by any one of the following methods:

- Federal rulemaking portal *www.regulations.gov.* The rule is listed under Agency Docket Number DOI–2019–0001.
- *Email:* Tribes may email comments to: *consultation@bia.gov.* All others should email their comments to: *comments@bia.gov.*
- *Mail or Courier:* Ms. Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street NW, Mail Stop 4660 MIB, Washington, DC 20240.

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Elizabeth K. Appel, Director, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, *Elizabeth.appel@bia.gov,* (202) 273–4680.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 2021, we published a proposed rule (86 FR 1037) to revise regulations governing probate of property that the United States holds in trust or restricted status for American Indians. The proposed rule had a 60-day public comment period, ending March 8, 2021. During the comment period for the proposed rule, we received a request for additional time to submit comments. In response to that request, we are allowing additional time for the public to comment on the proposed rule.

Public Comments

We will accept comments from the public during this reopened comment period on our proposed rule. If you already submitted comments on the proposed rule, please do not resubmit them. Any comments received before the new comment deadline will be accepted as timely submitted, including comments received after the original March 8, 2021 comment deadline, as long as they are received before the new comment deadline listed in the **DATES** section of this document. Any such comments are incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in preparation of our final determination.

You may submit your comments by any one of the methods listed in **ADDRESSES**. Please note that your comment—including your personal identifying information—will be posted on *www.regulations.gov,* regardless of which method you submit your comments. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Bryan Newland,

Principal Deputy Assistant Secretary—Indian Affairs.

Rachael S. Taylor,

Principal Deputy Assistant Secretary-Policy, Management and Budget.

[FR Doc. 2021–07188 Filed 4–13–21; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–121095–19]

RIN 1545–BP50

Requirements for Certain Foreign Persons and Certain Foreign-Owned Partnerships Investing in Qualified Opportunity Funds and Flexibility for Working Capital Safe Harbor Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that include requirements that certain foreign persons and certain foreign-owned partnerships must meet in order to elect the Federal income tax benefits provided by section 1400Z–2 of the Internal Revenue Code (Code). This document also contains proposed regulations that allow, under certain circumstances, for the reduction or elimination of withholding under section 1445, 1446(a), or 1446(f) of the Code on transfers that give rise to gain that is deferred under section 1400Z–2(a). Finally, this document contains additional guidance regarding the 24-month extension of the working capital safe harbor in the case of Federally declared disasters. The proposed regulations affect qualified opportunity funds and their investors.

DATES: Written or electronic comments and requests for a public hearing must be received by June 11, 2021. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for Public Hearing'' section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–121095–19) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through the mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG–121095–19), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning proposed §§ 1.1400Z2(a)–2 and 1.1445–3, Milton Cahn at (202) 317–4934; concerning proposed §§ 1.1446–3, 1.1446–6 and 1.1446–7, Ronald Gootzeit at (202) 317–4953; concerning proposed § 1.1446(f)–2, Subin Seth at (202) 317–5003; concerning proposed §§ 1.1400Z2(a)–1(a), 1.1400Z2(b)–1(c), and 1.1400Z2(d)–1(d), Erika Reigle at (202) 317–7006; concerning submissions of comments and/or requests for a public hearing, Regina L. Johnson, (202) 317–5177 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under sections 1400Z–2, 1445, and 1446 (proposed regulations). Section 13823 of Public Law 115–97, 131 Stat. 2054, 2184 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), added sections 1400Z–1 and 1400Z–2 to the Code. The purposes of section 1400Z–2 and the section 1400Z–2 regulations (that is, the final regulations set forth in §§ 1.1400Z2(a)–1 through 1.1400Z2(f)–1, 1.1502–14Z, and 1.1504–3) are to provide specified Federal income tax benefits to owners of qualified opportunity funds (QOFs) to encourage the making of longer-term investments, through QOFs and qualified opportunity zone businesses, of new capital in one or more qualified opportunity zones designated under section 1400Z–1 and to increase economic growth in such qualified opportunity zones. See § 1.1400Z2(f)–1(c)(1) (describing the purposes of section 1400Z–2 and the section 1400Z–2 regulations; Notice 2018–48, 2018–28 I.R.B. 9, and Notice 2019–42, 2019–29 I.R.B. 352 (setting forth the combined list of population census tracts designated as qualified opportunity zones).

Section 1400Z–1 provides the procedural rules for designating qualified opportunity zones and related definitions. Section 1400Z–2 provides two main tax incentives to encourage investment in qualified opportunity zones. See section 1400Z–2(b) and (c). First, a taxpayer, upon making a valid election, may generally defer, until the earlier of an inclusion event or December 31, 2026, certain gains in gross income that would otherwise be recognized in the tax year if the taxpayer invests a corresponding amount in a qualifying investment in a QOF within 180 days of the date of the sale or exchange. See section 1400Z–2(b)(1)(A) and (B). The taxpayer may potentially exclude ten percent of such deferred gain from gross income if the taxpayer holds the qualifying investment in the QOF for at least five years. See section 1400Z–2(b)(2)(B)(iii). An additional five percent of such gain may potentially be excluded from gross income if the taxpayer holds the qualifying investment for at least seven years. See section 1400Z–2(b)(2)(B)(iv). Second, a taxpayer, upon making a second valid election under section 1400Z–2(c), may also exclude from gross income any appreciation on the taxpayer's qualifying investment in the QOF if the qualifying investment is held for at least ten years. Section 1400Z–2(e)(4) provides that the Secretary of the Treasury or his delegate shall prescribe regulations as may be necessary or appropriate to carry out the purposes of section 1400Z–2, including rules to prevent abuse.

On October 29, 2018, the Treasury Department and the IRS published in the **Federal Register** (83 FR 54279) a notice of proposed rulemaking (REG–115420–18) providing guidance under section 1400Z–2 for investing in qualified opportunity funds (83 FR 54279 (October 29, 2018)) (October 2018 proposed regulations). A second notice of proposed rulemaking (REG–120186–18) was published in the **Federal Register** (84 FR 18652) on May 1, 2019, containing additional proposed regulations under section 1400Z–2 (May 2019 proposed regulations). The May 2019 proposed regulations also updated portions of the October 2018 proposed regulations. On January 13, 2020, final regulations (TD 9889) under section 1400Z–2 were published in the **Federal Register** (85 FR 1866, as corrected at 85 FR 19082), effective for taxable years beginning after March 13, 2020 (section 1400Z–2 regulations).

Under the section 1400Z–2 regulations, a taxpayer qualifies for deferral under section 1400Z–2(a) only if the taxpayer is an eligible taxpayer. Section 1.1400Z2(a)–1(a)(1). An eligible taxpayer is defined as a person that is required to report the recognition of gains during the taxable year under Federal income tax accounting principles. Section 1.1400Z2(a)–1(b)(13). If an eligible taxpayer that is a partnership does not elect to defer gain, a partner of such partnership may elect to defer its distributive share of the gain. Section 1.1400Z2(a)–1(c)(8).

The section 1400Z–2 regulations provide that only gains that are eligible gains may be deferred. Section 1.1400Z2(a)–1(b)(11). In general, an eligible gain is gain that (i) is treated as a capital gain or is a qualified 1231 gain, (ii) would be recognized for Federal income tax purposes and subject to tax under subtitle A of the Code before January 1, 2027, if section 1400Z–2(a)(1) did not apply to defer the gain, and (iii) does not arise from a sale or exchange of property with certain related persons. Id. Thus, for example, a nonresident alien individual or foreign corporation generally may make a deferral election with respect to an item of capital gain that is effectively connected with a U.S. trade or business, because this gain otherwise is subject to Federal income tax. When a partnership chooses to make a deferral election, the section 1400Z–2 regulations provide an exception to the general requirement that gain be subject to Federal income tax in order to constitute eligible gain, subject to an anti-abuse rule. Section 1.1400Z2(a)–1(b)(11)(ix)(B).

Foreign persons are generally subject to U.S. income tax on amounts that are effectively connected with the conduct of a trade or business within the United States (ECI). A foreign person that directly or indirectly is engaged in a trade or business in the United States must file a U.S. income tax return and pay any tax due.

To ensure the collection of tax, in certain circumstances, the Code imposes withholding requirements on payments or allocations of ECI to foreign persons. See sections 1445, 1446(a), and 1446(f). The amount of withholding under these provisions is intended to serve as a

proxy for the amount of the foreign person's substantive tax liability and may not match the actual amount of tax due. The amount withheld may be claimed as a credit against the amount of tax due and shown on the foreign person's tax return.

Specifically, section 1445(a) requires a transferee to withhold tax on a disposition of a United States real property interest (as defined in section 897(c)) (U.S. real property interest) by a foreign person. Generally, the transferee must withhold 15 percent of the amount realized and deposit the tax with the IRS within 20 days of the transfer. Certain exceptions and reductions to the rate of withholding can apply, including by the foreign person obtaining a withholding certificate from the IRS to reduce or eliminate the amount required to be withheld on the transfer.

Section 1445(e)(1) requires a domestic partnership, trust, or estate that disposes of a United States real property interest to withhold on any portion of the gain that is allocable to a foreign partner or beneficiary. The rate of withholding is the highest rate of tax in effect under section 11(b) (currently 21 percent).

Section 1445(e)(2) requires a foreign corporation that recognizes gain on the distribution of a United States real property interest to withhold on the gain at the highest rate of tax in effect under section 11(b).

Section 1445(e)(3) requires a domestic corporation that is or has been a United States real property holding corporation to withhold 15 percent of a distribution to a nonresident alien or foreign corporation.

Section 1445(e)(6) requires a qualified investment entity to withhold at the highest rate of tax specified in section 11(b) on the amount of the distribution that is treated as gain from the sale or exchange of a United States real property interest.

Section 1446(a) generally requires a partnership to withhold tax on effectively connected taxable income as determined under § 1.1446–2 (ECTI) allocable to a foreign partner, with limited adjustments, regardless of whether the income is distributed to the partner (section 1446(a) tax). A partnership must generally withhold section 1446(a) tax on a foreign partner's allocable share of ECTI at the highest rate of tax specified in section 1 (for a foreign partner other than a corporation) or section 11(b) (for a foreign partner that is a corporation). A partnership is generally required to pay the section 1446(a) tax in four installment payments. The partnership may consider certain partner-level deductions and losses as a reduction to the ECTI on which it must withhold section 1446(a) tax. See § 1.1446–6.

Section 1446(f) requires withholding under certain circumstances in connection with a disposition of a partnership interest. Specifically, if, on a disposition (which includes a distribution from a partnership to a partner) of a partnership interest, section 864(c)(8) treats any portion of a foreign partner's gain as effectively connected gain, section 1446(f) requires the transferee to withhold tax equal to 10 percent of the amount realized, unless an exemption or reduced rate of withholding applies. The transferee must deposit the tax with the IRS within 20 days of the transfer. See § 1.1446(f)–2. For purposes of section 1446(f), a transferor may in certain cases certify to the transferee that the transfer is not subject to withholding or otherwise qualifies for an exception to withholding or an adjustment to the amount required to be withheld. Id.

Under sections 33 and 1462, a foreign person subject to withholding under section 1445, 1446(a), or 1446(f) may credit the amount withheld against the amount of income tax liability shown on the person's tax return.

Explanation of Provisions

I. Overview of Proposed Regulations

These proposed regulations provide requirements for certain foreign persons and certain foreign-owned partnerships investing in QOFs and flexibility for working capital safe harbor plans.

II. Requirements for Certain Foreign Persons and Certain Foreign-Owned Partnerships Investing in QOFs

A. Coordination of the Deferral Election Under Section 1400Z–2(a) With the Withholding Rules Under Sections 1445, 1446(a) and 1446(f)

The existing section 1400Z–2 regulations do not coordinate the deferral election under section 1400Z–2(a) with the withholding rules in sections 1445, 1446(a), and 1446(f). Generally, these withholding provisions subject a foreign person to withholding to ensure the collection of tax due to the increased risk of noncompliance by a person that is not a United States person. In general, the withholding may be claimed as a credit or refund when the foreign person files its return and pays any substantive tax due. Thus, a foreign person subject to withholding that elects to defer gain under section 1400Z–2(a) may be entitled to apply the credit for withholding against tax on other income or claim a refund for the year in which withholding was applied, as the foreign person will not be required to pay substantive tax on all or a portion of the deferred gain until the gain is recognized upon the earlier of an inclusion event or December 31, 2026. In these circumstances, the withholding will not serve its intended purpose to ensure that the substantive tax is collected. To address the risk of noncompliance by certain foreign persons with respect to their U.S. tax obligations related to deferred gain under section 1400Z–2(a), the Treasury Department and the IRS have determined that coordination is needed between section 1400Z–2 and sections 1445, 1446(a), and 1446(f).

To ensure that the compliance purposes of sections 1445, 1446(a), and 1446(f) are not undermined when a foreign person elects to defer gain under section 1400Z–2(a), these proposed regulations provide that security-required persons (certain foreign persons and foreign-owned partnerships) investing gain that is a security-required gain (generally, gain from a transfer subject to withholding under section 1445, 1446(a), or 1446(f)) may not make a deferral election under section 1400Z–2(a) unless an eligibility certificate is obtained with respect to that gain. See section II.B of this Explanation of Provisions. At the same time, the proposed regulations eliminate or reduce withholding under section 1445, 1446(a), or 1446(f) on security-required persons that obtain an eligibility certificate and provide security to the IRS before the transaction giving rise to the gain. As discussed in Part II.C of this Explanation of Provisions, this exemption responds to comments received on the proposed regulations under section 1400Z–2 requesting withholding relief so that foreign persons have funds available to invest the entire amount of eligible gain into a QOF. A security-required person that does not obtain an eligibility certificate before the transfer, and thus is withheld upon, must still obtain an eligibility certificate to make a deferral election under section 1400Z–2(a). The security-required person (or, if applicable, its partner, owner, or beneficiary) may also claim a credit or refund for the amount withheld on the deferred gain when filing its return. The IRS intends to require any claim for credit or refund for amounts withheld under section 1445, 1446(a), or 1446(f) on deferred gain under section 1400Z–2(a) to include a copy of the eligibility certificate for the covered transfer (or a statement providing that the transfer was not a covered transfer).

B. Requirement for Certain Persons To Obtain Eligibility Certificate

1. In General

The proposed regulations provide that a taxpayer that is a security-required person may not make a deferral election under section 1400Z–2(a) with respect to part or all of a security-required gain from a covered transfer unless the taxpayer obtains an eligibility certificate from the IRS with respect to such security-required gain by the date on which the deferral election is filed with the IRS. Proposed § 1.1400Z2(a)–1(a)(3). The eligibility certificate must specify the permitted deferral amount, and the taxpayer may not make a deferral election with respect to the security-required gain in an amount that exceeds the permitted deferral amount. Id.

2. Security-Required Persons

A security-required person means a person that is either (i) a foreign person other than a partnership or (ii) a specified partnership. Proposed § 1.1400Z2(a)–2(b)(1). To minimize burden, the Treasury Department and the IRS have decided not to require that all partnerships electing to defer gain under section 1400Z–2(a) obtain an eligibility certificate. Rather, the rules regarding specified partnerships are intended to impose this requirement only on partnerships that pose a compliance risk with respect to the collection of tax on any deferred gain and that either hold a significant amount of U.S. real property interests or assets used in a U.S. trade or business or that generate a significant amount of gain that the partnership elects to defer. An abusive avoidance of the rules regarding specified partnerships is subject to the existing anti-abuse rule in § 1.1400Z2(f)–1(c)(1) (providing that if a significant purpose of a transaction is to achieve a Federal income tax result that is inconsistent with the purposes of section 1400Z–2 and the section 1400Z–2 regulations, a transaction (or series of transactions) will be recast or recharacterized for Federal income tax purposes as appropriate to achieve tax results that are consistent with the purposes of section 1400Z–2 and the section 1400Z–2 regulations).

A specified partnership is a partnership, foreign or domestic, that meets three tests with respect to a transfer that produces a security-required gain: An ownership test, a closely-held test, and a gain or asset test. Proposed § 1.1400Z2(a)–2(b)(3). The ownership test is met if, at the time of transfer, 20 percent or more of the capital or profits interests in the partnership are owned (directly or indirectly through one or more partnerships, trusts, or estates) by one or more nonresident aliens or foreign corporations. Proposed § 1.1400Z2(a)–2(b)(3)(i). The closely-held test is met if, at any time during a look-back period, a partnership has 10 or fewer direct partners that own 90 percent or more of the capital or profits interests in the partnership, with any related partners (within the meaning of section 267(b) or 707(b)(1)) being treated as a single partner. Proposed § 1.1400Z2(a)–2(b)(3)(ii). For purposes of the closely-held test, the look-back period is the period that begins on the later of the date that is one year before the date of the transfer or the date on which the partnership was formed, and that ends on the date of the transfer. Id. Further, a partner that is a partnership or trust is considered a direct partner. Id. The gain or asset test is met if either: (i) The amount of security-required gain from the transfer exceeds $1 million (the gain test) or (ii) at any time during a look-back period, the value of the partnership's assets that are U.S. real property interests or assets used in a U.S. trade or business exceeds 25 percent of the total value of the partnership's assets (the asset test). Proposed § 1.1400Z2(a)–2(b)(3)(iii). For purposes of the asset test, the look-back period is the same as the look-back period for purposes of the closely held test. Id. The proposed regulations allow the partnership to determine the value of an asset on the last day of the taxable year preceding the year in which the look-back period begins or, for any asset acquired after this date (including upon formation of the partnership), on the date of acquisition. Id. The proposed regulations also provide rules for looking through interests in other partnerships to value assets that are held indirectly. Id. Finally, the proposed regulations state that the value of each asset will be measured according to its gross fair market value. Id. The Treasury Department and the IRS request comments on whether a method of valuing assets other than fair market value should be used for purposes of the asset test. The Treasury Department and the IRS also request comments on whether net value, instead of gross value, should be used for purposes of the asset test.

3. Covered Transfer and Security-Required Gain

A covered transfer is defined as: (i) A disposition by, or a distribution to, a security-required person that is subject to withholding under section 1445; (ii) a disposition by, or a distribution to, a security-required person that is subject to withholding under section 1446(f); (iii) a disposition by a specified partnership of property, other than an interest in another partnership or a U.S. real property interest, or a distribution to a specified partnership, if any gain that arises is included in computing ECTI; or (iv) a disposition by a partnership that is not a specified partnership of property, or a distribution to such a partnership, if any gain that arises is included in determining the allocable share of a security-required person's ECTI.[1] Proposed § 1.1400Z2(a)–2(c)(2)(i). The proposed regulations generally provide that a transfer subject to section 1445 or 1446(f) is not a covered transfer if an exception to withholding applies under those provisions. Proposed § 1.1400Z2(a)–2(c)(2)(ii). However, in order to impose the eligibility certificate requirements on security-required persons that are domestic specified partnerships, if the exception to withholding is based on the non-foreign status of the transferor, the transfer will continue to be treated as a covered transfer. Id. For the same reason, a domestic specified partnership is treated as a foreign person in determining whether a transfer is a covered transfer as defined in (A), (B), and (D) of proposed § 1.1400Z2(a)–2(c)(2)(i).

Security-required gain is certain gain that arises from a covered transfer. Proposed § 1.1400Z2(a)–2(c)(1). For a covered transfer defined in proposed § 1.1400Z2(a)–2(c)(2)(i)(C) (described in (iii) in the first sentence of the preceding paragraph), the amount of security-required gain is the gain that is included in computing ECTI under § 1.1446–2, disregarding § 1.1446–2(b)(4)(i). Id. For a covered transfer defined in proposed § 1.1400Z2(a)–2(c)(2)(i)(D) (described in (iv) in the first sentence of the preceding paragraph), the amount of security-required gain is the gain that is included in computing ECTI under § 1.1446–2 that is allocable to the security-required person. Id.

[1] While both categories (iii) and (iv) describe dispositions or distributions, the gain from which is used in the calculation of ECTI under § 1.1446–2, category (iii) describes transactions directly involving a specified partnership, while category (iv) describes transactions involving a partnership that is not a specified partnership that produce gain allocable to a partner that is a security-required person. The transactions described in category (iii) are limited to those involving property other than partnership interests and U.S. real property interests because the direct transfer by a specified partnership of a partnership interest is subject to withholding under section 1446(f) (and thus is already described in category (ii)), and the direct transfer of a U.S. real property interest is subject to withholding under section 1445 (and thus is already described in category (i)).

4. Application for an Eligibility Certificate and Acceptable Security

To obtain an eligibility certificate with respect to any security-required gain, a security-required person must submit an application to the IRS. Proposed § 1.1400Z2(a)–2(d)(2). The IRS is considering requiring electronic submission of the application; this process would be described in forms, instructions, publications, or guidance published in the Internal Revenue Bulletin. The application must generally include the following: (i) Certain information about the security-required person and the covered transfer; (ii) an agreement for the deferral of tax and provision of security (deferral agreement); (iii) an agreement with a U.S. agent (as defined in proposed § 1.1400Z2(a)–2(d)(4)(ii)(D)); and (iv) acceptable security that secures the amount of security-required gain for which the eligibility certificate is being obtained. Proposed § 1.1400Z2(a)–2(d)(3). The application includes the requirement to provide a U.S. taxpayer identification number. If applicants do not yet have a U.S. taxpayer identification number, additional time should be allocated to ensure that a U.S. taxpayer identification number can be obtained; see the instructions to Forms W–7 and SS–4. The IRS may prescribe in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see §§ 601.601(d)(2) and 601.602 of this chapter) procedures for obtaining a U.S. taxpayer identification number under these circumstances.

Acceptable security is defined as an irrevocable standby letter of credit issued by a U.S. bank that meets certain capital and other requirements specified in these proposed regulations. Proposed § 1.1400Z2(a)–2(d)(6)(ii). The proposed regulations provide that the IRS may identify in published guidance additional financial institutions that may qualify as issuers of letters of credit. Id. The Treasury Department and the IRS request comments on financial institutions other than banks that should qualify as issuers of letters of credit. The Treasury Department and the IRS also request comments on whether additional types of security are needed. Any additional proposed types of security should preserve administrative flexibility to require electronic submission of applications and protect the IRS's collection ability.

5. Deferral Agreement and Events of Default

In general, under the deferral agreement, the security-required person agrees to do the following: Timely file a Federal income tax return and pay any tax liability due on the security-required gain for which the security-required person seeks to defer gain under section 1400Z–2(a) when required; report any security-required gain in accordance with the regulations under section 1400Z–2; provide security to the IRS with respect to any tax liability due on security-required gain for which the security-required person seeks to defer gain under section 1400Z–2(a); and appoint a U.S. person to act as the security-required person's limited agent for certain purposes specified in the deferral agreement. Proposed § 1.1400Z2(a)–2(d)(4)(ii). The deferral agreement must conform to the template provided in guidance published in the Internal Revenue Bulletin. Proposed § 1.1400Z2(a)–2(d)(4)(i).

An event of default under the deferral agreement is an inclusion event that triggers recognition of the security-required gain for which the security-required person seeks to defer gain under section 1400Z–2(a). Proposed § 1.1400Z2(a)–2(d)(4)(ii)(E). Defaults, upon which an event of default may be based, will be specified in the deferral agreement, and may include the following: A determination that the security is no longer adequate to protect the IRS's interests; a change in the creditworthiness of the issuer of a letter of credit; and a failure by the security-required person to file returns or attach an eligibility certificate (when required) during the period covered by the deferral agreement. Proposed § 1.1400Z2(a)–2(d)(4)(ii)(E). In addition, the deferral agreement will specify whether notice of default and an opportunity to cure will be provided to the security-required person before an event of default arises. Id.

6. Amount of Eligibility Certificate

The proposed regulations provide that an eligibility certificate will be issued for a permitted deferral amount. Proposed § 1.1400Z2(a)–2(d)(1). If a security-required person provides security in an amount equal to the maximum security amount, the permitted deferral amount is the total amount of security-required gain. Proposed § 1.1400Z2(a)–2(d)(7)(i). If a security-required person provides security in an amount less than the maximum security amount, the permitted deferral amount is the total amount of security-required gain multiplied by the ratio of the amount of security provided over the maximum security amount. Id.

The proposed regulations provide specific rules for determining the maximum security amount, which is generally computed by reference to either a percentage of the amount realized on the covered transfer or the amount of tax due on the security-required gain. See proposed § 1.1400Z2(a)–2(d)(7)(ii). The maximum security amount on a direct disposition by, or a distribution to, a security-required person that is subject to withholding under section 1445 is the lesser of: (i) The amount realized multiplied by the rate specified under section 1445(a) (or, for transfers subject to section 1445(e)(1), (e)(2), or (e)(6), the rate specified in the applicable provision) or (ii) the security-required gain multiplied by the highest rate of tax applicable to the gain, based on the type of property, holding period, and the classification of the security-required person. Proposed § 1.1400Z2(a)–2(d)(7)(ii)(A). The maximum security amount on a direct disposition by, or a distribution to, a security-required person that is subject to withholding under section 1446(f) is the lesser of: (i) The amount realized multiplied by the rate specified under section 1446(f)(1) or (ii) the security-required gain multiplied by the highest rate of tax applicable to the gain based on the type of property, holding period, and the classification of the security-required person. Proposed § 1.1400Z2(a)–2(d)(7)(ii)(B). If a direct disposition of a partnership interest is subject to withholding under both sections 1445 and 1446(f), the proposed regulations provide that the rate specified in section 1445 is used for purposes of determining the maximum security amount. Proposed § 1.1400Z2(a)–2(d)(7)(ii)(A) and (B).

For a direct disposition of property, other than an interest in another partnership or a U.S. real property interest, by a specified partnership, or a distribution to a specified partnership, the maximum security amount is the security-required gain multiplied by the highest rate of tax applicable to the gain, treating the specified partnership as an individual for this purpose, and taking into account the type of property and holding period. Proposed § 1.1400Z2(a)–2(d)(7)(ii)(C). Therefore, a specified partnership that has gain arising from the direct sale or exchange of an asset used in a U.S. trade or business (other than a U.S. real property interest) will generally be required to obtain an eligibility certificate for such gain if it wants to elect to defer all or part of the gain by investing in a QOF.

For a disposition of property (including an interest in another partnership or a U.S. real property interest) by a partnership that is not a specified partnership, or a distribution

to such a partnership, that gives rise to gain that is included in determining the allocable share of a security-required person's ECTI, the maximum security amount is the security-required gain multiplied by the highest rate of tax applicable to the gain, taking into account the type of property, holding period, and the classification of the security-required person. Proposed § 1.1400Z2(a)–2(d)(7)(ii)(D).

C. Elimination or Reduction of Withholding Based on an Eligibility Certificate

Comments on the May 2019 proposed regulations requested relief from withholding under section 1445, 1446(a), or 1446(f) on transactions if gain from those transactions was deferred under section 1400Z–2. One comment requested that a foreign taxpayer engaging in a sale subject to withholding under section 1445 be able to provide a certificate or other form of documentation to avoid withholding based on the taxpayer's intention to invest the resulting gain in a QOF pursuant to a deferral election under section 1400Z–2(a)(1). In addition, the comment suggested that a foreign taxpayer would be required to certify that it will file a tax return in the year the QOF interest is sold. Another comment requested an exemption from withholding when a foreign person enters into an agreement with the IRS to pay the tax when the deferred gain is included under section 1400Z–2(a)(1)(B) and (b), similar to when a gain recognition agreement is ''triggered'' under section 367 and the regulations thereunder. Another comment suggested that the IRS provide a reduced FIRPTA withholding certificate for foreign persons who intend to invest in QOFs.

The comments noted that withholding may reduce the amount of funds available to the foreign person to invest in the QOF fund within the 180-day investment period. Even though the foreign person may later obtain a refund of the amount withheld, there may be a temporary lack of liquidity that could prevent an investor from investing all of its eligible gain into a QOF.

The proposed regulations address these comments by allowing a security-required person to use an eligibility certificate as a basis for reducing or eliminating withholding under section 1445, 1446(a), or 1446(f) on a covered transfer. For purposes of section 1445, a security-required person may apply for a withholding certificate from the IRS based on an eligibility certificate. For purposes of section 1446(f), the proposed regulations add a rule to allow a transferee to rely on an eligibility certificate to qualify for an exception or adjustment to withholding.

Section 1.1446–3 currently allows a partnership to consider certain partner level deductions and losses certified in accordance with § 1.1446–6 in determining its section 1446 tax. The proposed regulations modify the rules in §§ 1.1446–3 and 1.1446–6 to allow a partnership to also consider in determining its section 1446 tax the permitted deferral amount of an eligibility certificate submitted by a partner. When determining installments of 1446 tax, to ensure that the reduction in effectively connected items by the permitted deferral amount is fully taken into account, the eligibility certificate must be considered before the effectively connected items are annualized. Proposed §§ 1.1446–3(b)(2)(i)(B)(*1*) and 1.1446–6(c)(1)(iv).

Because the withholding requirement on a transfer or distribution with respect to an interest in a publicly traded partnership (PTP) is generally imposed on a broker (or nominee), and it would be administratively difficult for a broker to timely obtain an eligibility certificate, the procedures for using an eligibility certificate to reduce or eliminate withholding do not apply for these purposes. A security-required person that has gain arising from a disposition or distribution with respect to a PTP interest is, however, still required to obtain an eligibility certificate to defer security-required gain.

III. Flexibility With Respect to Working Capital Safe Harbor Plans in the Event of a Federally Declared Disaster

After the major disaster declarations issued in response to the ongoing novel coronavirus 2019 (COVID–19) pandemic,[2] commenters expressed a need for additional regulatory guidance regarding the operation of the 24-month extension for the working capital safe harbor included in the section 1400Z–2 regulations for Federally declared disasters. Although the final regulations provide a qualified opportunity zone business an additional 24 months to expend its working capital assets, the qualified opportunity zone business must do so in a manner substantially consistent with the original, pre-disaster written designation in which the amount of working capital assets subject to the safe harbor are designated and according to the original, pre-disaster written schedule for expending such amounts. In some cases, the commenters pointed out, the post-disaster environment facing the qualified opportunity zone business may render the original plan suboptimal or even infeasible.

In response, this notice of proposed rulemaking proposes to add three new sentences at the end of § 1.1400Z2(d)–1(d)(3)(v)(D) that provide flexibility for qualified opportunity zone businesses to revise or replace the original written designation and written plan, provided that the remaining working capital assets are expended within the original regulatorily required 31-month period, increased by the 24 additional months provided in response to the Federally declared disaster.

IV. Applicability Dates

A. Proposed Regulations Related to Covered Transfers

The proposed regulations relating to covered transfers, including the requirement for eligibility certificates, will apply to any covered transfer that occurs after the date that these regulations are published as final regulations in the **Federal Register**. Taxpayers should not submit applications for eligibility certificates before the date that these regulations are published as final regulations in the **Federal Register**. Any applications submitted before such date will not be processed by the IRS.

B. Proposed Regulations Related to Federally Declared Disasters

The three new sentences proposed to be added at the end of § 1.1400Z2(d)–1(d)(3)(v)(D) are proposed to apply to taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**. Additionally, a taxpayer may rely on the three new sentences proposed to be added at the end of § 1.1400Z2(d)–1(d)(3)(v)(D) for taxable years beginning after December 31, 2019.

Special Analyses

I. Regulatory Planning and Review

This proposed regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

II. Paperwork Reduction Act

A. Collection of Information for Proposed § 1.1400Z2(a)–2

Proposed § 1.1400Z2(a)–2 contains collections of information that are not on existing or new IRS forms. The proposed regulations require that security-required persons submit to the

[2] See *https://www.fema.gov/coronavirus/disaster-declarations.*

IRS an application that includes the following information and documents to obtain an eligibility certificate with respect to security-required gain.

1. Identification of security-required person (proposed § 1.1400Z2(a)–2(d)(3)(ii));

2. Information about the covered transfer (proposed § 1.1400Z2(a)–2(d)(3)(iii));

3. Agreement for deferral of tax and provision of security (proposed § 1.1400Z2(a)–2(d)(4));

4. U.S. agent agreement (proposed § 1.1400Z2(a)–2(d)(5)); and

5. Security and any related required documents (proposed § 1.1400Z2(a)–2(d)(6)).

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act. Commenters are strongly encouraged to submit public comments electronically. Comments and recommendations for the proposed information collection may be submitted via *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' then by using the search function. Comments can also be emailed to the IRS at *omb.unit@irs.gov* (indicate REG–121095–19 on the subject line). Comments also may be mailed to OMB, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed to the IRS, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collections of information should be received by June 14, 2021. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (including underlying assumptions and methodology);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The likely respondents required to comply with these proposed regulations are business, other for-profit taxpayers, or individuals. The proposed frequency of recordkeeping and reporting requirement will be as needed.

Estimated total annual reporting burden: 35,000 hours.

Estimated average annual burden hours per respondent: Approximately 10 hours.

Estimated number of respondents: 3,500.

Estimated annual frequency of responses: On occasion (as the collections of information do not occur on an annual basis).

B. Collection of Information for Proposed § 1.1400Z2(d)–1(d)(3)(v)(D)

Proposed § 1.400Z2(d)–1(d)(3)(v)(D) imposes an additional information collection requirement in the form of recordkeeping. The creation of, or modification of, existing written schedules as required under proposed § 1.1400Z2(d)–1(d)(3)(v)(D) will be performed by qualified opportunity zone businesses that want to receive an additional 24 months to expend their working capital assets, under the extension of time permitted by proposed § 1.1400Z2(d)–1(d)(3)(v)(D). This recordkeeping requirement will not be conducted using a new or existing IRS form. Such businesses must maintain, as part of their records, a copy of the written working plan including any modifications to the plan and provide these records to the IRS upon its request. This modification encourages investment in QOFs by providing greater specificity to how an entity may consistently satisfy the statutory requirements to be a qualified opportunity zone business in light of the current economic climate. However, the increase in burden on these entities is minimal as these entities were required to maintain such records prior to the proposed modification if they wanted to utilize a working capital safe harbor under § 1.1400Z2(d)–1(d)(3)(v).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

III. Regulatory Flexibility Act

It is hereby certified that the proposed regulations under §§ 1.1400Z2(a)–1, 1.1400Z2(a)–2, 1.1400Z2(b)–1, 1.1445–3, 1.1446–3, 1.1446–6, 1.1446–7 and 1.1446(f)–2, if adopted, will not have a significant economic impact on a substantial number of domestic small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Although these proposed regulations would primarily affect foreign persons, they may have an impact on a small number of domestic partnerships. The domestic partnerships affected by these regulations are closely-held partnerships with significant foreign ownership and that either have substantial assets that are either U.S. real property interests or assets used in a U.S. trade or business or a large amount of gain from the sale of such assets. This is a narrow set of taxpayers and is likely a small subset of persons that invest in a QOF.

It is hereby certified that the proposed regulation under § 1.1400Z2(d)–1(d)(3)(v)(D), if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act. The Treasury Department and the IRS anticipate that this proposed regulation will provide added clarity for qualified opportunity zone businesses to create or modify existing written plans to expend working capital in the event of a Federally declared disaster.

Taxpayers affected by these proposed regulations include QOFs, investors in QOFs and qualified opportunity zone businesses in which a QOF holds an ownership interest. The proposed regulations will not directly affect the taxable incomes and tax liabilities of qualified opportunity zone businesses; they will affect only the taxable income and tax liabilities of QOFs (and owners of QOFs) that invest in such businesses. Although there is a lack of available data regarding the extent to which small entities invest in QOFs, will certify as QOFs, or receive equity investments from QOFs, the Treasury Department and the IRS project that most of the investment flowing into QOFs will come from large corporations and wealthy individuals though some of these funds would likely flow through an intermediary investment partnership. It is expected that some QOFs and qualified opportunity zone businesses would be classified as small entities; however, the number of small entities significantly affected is not likely to be substantial. Accordingly, the Secretary certifies that these rules will not have a

significant economic impact on a substantial number of small entities.

Notwithstanding this certification, the Treasury Department and the IRS invite comments on any impact these regulations would have on small entities.

Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications, does not impose substantial direct compliance costs on state and local governments, and does not preempt state law within the meaning of the Executive Order.

Comments and Requests for Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal authors of these proposed regulations are Milton Cahn, L. Ulysses Chatman, Ronald M. Gootzeit, and Subin Seth of the Office of the Associate Chief Counsel (International) and Erika Reigle of the Office of the Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin or Cumulative Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for § 1.1400Z2(a)–2 and revising the entries for §§ 1.1445–3, 1.1446–3, 1.1446–6, 1.1446–7 and 1.1446(f)–2 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.1400Z2(a)–2 also issued under 26 U.S.C. 1400Z–2(e)(4).

* * * * *

Section 1.1445–3 also issued under 26 U.S.C. 1400Z–2(e)(4) and 26 U.S.C. 1445(e)(7).

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Section 1.1446–3 also issued under 26 U.S.C. 1400Z–2(e)(4) and 26 U.S.C. 1446(g).

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Section 1.1446–6 also issued under 26 U.S.C. 1400Z–2(e)(4) and 26 U.S.C. 1446(g).

Section 1.1446–7 also issued under 26 U.S.C. 1400Z–2(e)(4) and 26 U.S.C. 1446(g).

* * * * *

Section 1.1446(f)–2 also issued under 26 U.S.C. 1400Z–2(e)(4), 26 U.S.C. 1446(f)(6), and 26 U.S.C. 1446(g).

* * * * *

■ **Par. 2.** Section 1.1400Z2–0 is amended by:

■ 1. Revising the introductory text.

■ 2. Adding an entry for § 1.1400Z2(a)–1(a)(3).

■ 3. Revising the entry for § 1.1400Z2(a)–1(g)(2).

■ 4. Adding an entry for § 1.1400Z2(a)–2.

■ 5. Adding an entry for § 1.1400Z2(b)–1(j)(3).

■ **6. Revising the entry for § 1.1400Z2(d)–1(e)(2).**

The revisions and additions read as follows:

§ 1.1400Z2–0 Table of Contents.

This section lists the table of contents for §§ 1.1400Z2(a)–1 through 1.1400Z2(f)–2.

§ 1.1400Z2(a)–1 Deferring tax on capital gains by investing in opportunity zones.

(a) * * *

(3) Eligibility certificate needed to establish the permitted deferral amount for certain foreign persons and foreign-owned partnerships.

* * * * *

(g) * * *

(2) Exceptions.

§ 1.1400Z2(a)–2 Certain foreign persons and foreign-owned partnerships required to provide security.

(a) In general.
(b) Security-required person.
(1) In general.
(2) Foreign person.
(3) Specified partnership.
(c) Security-required gain.
(1) Definition.
(2) Covered transfer.
(d) Eligibility certificate.
(1) In general.
(2) Application materials.
(3) Application.
(4) Deferral agreement.
(5) U.S. agent agreement.
(6) Security.
(7) Permitted deferral amount.
(e) Example.
(f) Applicability date.

§ 1.1400Z2(b)–1 Inclusion of gains that have been deferred under section 1400Z–2(a).

* * * * *

(j) * * *

(3) Specific rules.

§ 1.1400Z2(d)–1 Qualified opportunity funds and qualified opportunity zone businesses.

* * * * *

(e) * * *

(2) Exceptions.

* * * * *

■ **Par. 3.** Section 1.1400Z2(a)–1 is amended by:

■ 1. Adding paragraph (a)(3).

■ 2. Revising paragraph (g)(1).

■ 3. Redesignating paragraphs (g)(2) introductory text and (g)(2)(i) and (ii) as paragraphs (g)(2)(i) and (g)(2)(i)(A) and (B), respectively.

■ 4. Adding a subject heading for newly redesignated paragraph (g)(2).

■ 5. Adding new paragraph (g)(2)(ii).

The revisions and additions read as follows:

§ 1.1400Z2(a)–1 Deferring tax on capital gains by investing in opportunity zones.

(a) * * *

(3) *Eligibility certificate needed to establish the permitted deferral amount for certain foreign persons and foreign-owned partnerships.* Notwithstanding any other provision of this section, if a taxpayer is a security-required person (as defined in § 1.1400Z2(a)–2(b)(1)) with respect to a gain and that gain is a security-required gain (as defined in § 1.1400Z2(a)–2(c)(1)), then the taxpayer may not make a deferral election under section 1400Z–2(a) with respect to part or all of that gain unless the requirements in paragraph (a)(3)(i), (ii), and (iii) of this section are satisfied.

(i) Not later than the date on which the deferral election is filed with the IRS under paragraph (a)(2) of this section, the person obtains an eligibility certificate with respect to that gain (as defined in § 1.1400Z2(a)–2(d)(1));

(ii) The eligibility certificate provides a permitted deferral amount (as defined in § 1.1400Z2(a)–2(d)(7)); and

(iii) The amount of gain sought to be deferred does not exceed the permitted deferral amount.

(iv) See § 1.1400Z2(a)–2 for additional requirements for certain foreign persons and foreign-owned partnerships to make a valid deferral election.

(v) *Examples.* The examples in this paragraph (a)(3)(v) illustrate the rule in paragraph (a)(3) of this section.

(A) *Example 1. Eligibility certificate for a permitted deferral amount that is less than the total amount of security-required gain.* Taxpayer realizes a $100x gain, which is an eligible gain. In addition, Taxpayer is a security-required person with respect to that gain, and the gain is a security-required gain. Taxpayer invests $100x in a QOF, and, without taking into account the limitation in paragraph (a)(3)(i) of this section, Taxpayer would be able to make a valid deferral election with respect to the entire $100x gain. Taxpayer applies for an eligibility certificate with respect to that gain and receives the eligibility certificate before timely filing Taxpayer's Federal income tax return for the taxable year in which the gain would be recognized. The eligibility certificate, however, provides a permitted deferral amount of $75x. Under paragraph (a)(3) of this section, therefore, a valid deferral election is limited to that deferral amount. Consequently, $75x of Taxpayer's investment in the QOF is a qualifying investment, which is described in section 1400Z–2(e)(1)(A)(i), and no election under section 1400Z–2(a) can apply to the remaining $25x ($100x − $75x) investment. As a result, that remaining investment in the QOF is a non-qualifying investment, which is described in section 1400Z–2(e)(1)(A)(ii).

(B) *Example 2. Deferring gain from inclusion.* In 2022, Taxpayer realizes a gain of $x, Taxpayer was a security-required person with respect to that gain, and the gain was a security-required gain. Complying with all the requirements in this section (including paragraph (a)(3) of this section), Taxpayer made a valid election to defer a gain of $x, after having invested $x in a QOF. In 2025, after Taxpayer's interest in the QOF had appreciated by $y, Taxpayer sold that interest for $x + $y. The sale was an inclusion event, requiring Taxpayer to include in income the deferred gain of $x. Under paragraph (c)(1) of this section, the $x inclusion is a security-required gain because the deferred gain was a security-required gain. If Taxpayer wants to elect to defer the $x of included gain and Taxpayer is a security-required person with respect to the included gain, the limitation in paragraph (a)(3) of this section applies. Whether the $y gain from the sale is a security-required gain is determined by whether, independent of the treatment of the inclusion, the $y gain on the sale is within the definition of security-required gain in § 1.1400Z2(a)–2(c).

* * * * *

(g) * * *

(1) *In general.* Except as provided in paragraph (g)(2) of this section, the provisions of this section are applicable for taxable years beginning after March 13, 2020.

(2) *Exceptions.* * * *

(ii) *Eligibility certificate requirement.* Paragraph (a)(3) of this section applies to any security-required gain (as defined in § 1.1400Z2(a)–2(c)(1)) from a covered transfer (as defined in § 1.1400Z2(a)–2(c)(2)) that occurs after [DATE OF PUBLICATION OF FINAL RULE].

■ **Par. 4.** Section 1.1400Z2(a)–2 is added to read as follows:

§ 1.1400Z2(a)–2 Certain foreign persons and foreign-owned partnerships required to provide security.

(a) *In general.* This section provides definitions and procedures for certain foreign persons and foreign-owned partnerships to obtain an eligibility certificates in order to meet the requirement in § 1.1400Z2(a)–1(a)(3) to make a deferral election with respect to certain gains. Paragraph (b) of this section describes the persons required to obtain an eligibility certificate. Paragraph (c) of this section describes the gains for which an eligibility certificate must be obtained. Paragraph (d) of this section provides the procedures for obtaining an eligibility certificate and defines the type and amount of security required.

(b) *Security-required person*—(1) *In general.* A *security-required person* is, with respect to a gain, a person that would be required to report the recognition of the gain under Federal income tax principles and that is either—

(i) A foreign person that is not a partnership, or

(ii) A specified partnership (as defined in paragraph (b)(3) of this section).

(2) *Foreign person.* The term *foreign person* means a person that is not a United States person under section 7701(a)(30).

(3) *Specified partnership.* The term *specified partnership* means, with respect to a transfer that gives rise to a security-required gain, a partnership that satisfies the requirements of paragraphs (b)(3)(i) through (iii) of this section. For purposes of paragraphs (b)(3)(ii) and (iii) of this section, the look-back period is the period that begins on the later of the date that is one year before the date of the transfer or the date on which the partnership was formed, and that ends on the date of such transfer. A domestic specified partnership means a specified partnership that is a domestic partnership.

(i) *Ownership test.* A partnership satisfies the requirements of this paragraph (b)(3)(i) if, at the time of transfer, 20 percent or more of the capital or profits interests in the partnership are owned (directly or indirectly through one or more partnerships, trusts, or estates) by one or more nonresident aliens or foreign corporations.

(ii) *Closely-held test.* A partnership satisfies the requirements of this paragraph (b)(3)(ii) if, at any time during the look-back period, it has ten or fewer direct partners that own 90 percent or more of the capital or profits interests in the partnership. For this purpose, any partners that are related (within the meaning of section 267(b) or 707(b)(1)) are treated as one partner.

(iii) *Gain or asset test.* A partnership satisfies the requirements of this paragraph (b)(3)(iii) if either the security-required gain is $1 million or more (the gain test), or the aggregate value of the partnership's assets that are United States real property interests (as defined in section 897(c)) or assets used in the conduct of a trade or business

within the United States is, at any time during the look-back period, equal to or greater than 25 percent of the value of all of the assets of the partnership (the asset test). In making the calculation under the asset test described in this paragraph (b)(3)(iii)—

(A) The value of each asset is determined on the last day of the taxable year before the year in which the look-back period begins or, for any asset acquired after this date, on the date of acquisition (including upon formation of the partnership);

(B) The value of each asset is measured according to its gross fair market value; and

(C) The partnership must include the value of the proportionate share of any assets held by a partnership in which the first-mentioned partnership is a direct or indirect partner, but the first-mentioned partnership must not include the value of a direct or indirect interest in another partnership.

(c) *Security-required gain*—(1) *Definition.* The term *security-required gain* means—

(i) The gain from a covered transfer described in paragraphs (c)(2)(i)(A) or (B) of this section;

(ii) The gain from a covered transfer described in paragraph (c)(2)(i)(C) of this section that is included in computing effectively connected taxable income, as determined under § 1.1446–2 (ECTI), disregarding § 1.1446–2(b)(4)(i); or

(iii) The gain from a covered transfer described in paragraph (c)(2)(i)(D) of this section that is included in computing ECTI allocated to a security-required person.

(2) *Covered transfer*—(i) *In general.* The term *covered transfer* means—

(A) A disposition by, or a distribution to, a security-required person that is subject to withholding under section 1445 (treating a security-required person that is a domestic specified partnership as a foreign person for this purpose);

(B) A disposition by, or a distribution to, a security-required person that is subject to withholding under section 1446(f) (treating a security-required person that is a domestic specified partnership as a foreign person for this purpose);

(C) A disposition by a specified partnership of property, other than an interest in another partnership or a U.S. real property interest, or a distribution to a specified partnership, if any gain that arises is includible in computing ECTI; or

(D) A disposition by a partnership of property, or a distribution to such a partnership, if any gain that arises is includible (by any partnership) in determining the allocable share of a security-required person's ECTI (treating a security-required person that is a domestic specified partnership as a foreign person for this purpose).

(ii) *Exceptions to withholding.* A disposition or distribution described in paragraph (c)(2)(i)(A) or (B) of this section is not a covered transfer if an exception under § 1.1445–2, 1.1446(f)–2(b), or 1.1446(f)–4(b) applies (other than an exception pertaining to non-foreign status in § 1.1445–2(b), § 1.1446(f)–2(b)(2), or § 1.1446(f)–4(b)(2)). In determining whether an exception applies for purposes of this paragraph (c)(2)(ii), any requirement to provide a certification to the transferee in order to claim the applicable exception is disregarded.

(d) *Eligibility certificate*—(1) *In general.* This paragraph (d) defines an eligibility certificate with respect to a gain and describes the procedures for obtaining such a certificate. The term *eligibility certificate* means, with respect to a security-required gain, a document issued by the IRS pursuant to this paragraph (d) that provides the permitted deferral amount. The eligibility certificate will also include the maximum security amount, the amount of security provided, and any other information as may be prescribed in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see §§ 601.601(d)(2) and 601.602 of this chapter). Generally, the IRS will make a determination with respect to a complete application for an eligibility certificate not later than the 90th day after the date that all information necessary for the IRS to make a determination is received. At its discretion, the IRS may extend this period in unusual circumstances after notifying the security-required person no later than the 45th day after the date that all information necessary for the IRS to make a determination is received. The IRS will send a notification to the security-required person of its determination and, if the application is approved, provide an eligibility certificate to the security-required person. For the use of an eligibility certificate to reduce or eliminate certain withholding taxes, see §§ 1.1445–3(e)(5), 1.1446–6(c)(1)(iv), and 1.1446(f)–2(b)(8) and (c)(5).

(2) *Application materials.* To obtain an eligibility certificate with respect to security-required gain, a security-required person must submit to the IRS the application described in paragraph (d)(3) of this section, the deferral agreement described in paragraph (d)(4) of this section, the U.S. agent agreement described in paragraph (d)(5) of this section, and the security (or evidence of security) of the type and in the amount described in paragraphs (d)(6) and (7) of this section.

(3) *Application*—(i) *In general.* An application for an eligibility certificate must be submitted in the form and in the manner prescribed in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see §§ 601.601(d)(2) and 601.602 of this chapter). An application for an eligibility certificate must include the information described in paragraphs (d)(3)(ii) and (iii) of this section and any other information prescribed in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see §§ 601.601(d)(2) and 601.602 of this chapter). The security-required person must sign the application and represent under penalties of perjury that all information provided on or with the application is true, correct, and complete to the best of that person's knowledge and belief.

(ii) *Identification of security-required person and U.S. agent.* The application for an eligibility certificate must include the name, address, and U.S. taxpayer identification number of the security-required person, and the name, address, and U.S. taxpayer identification number of the security-required person's U.S. agent (as defined in paragraph (d)(4)(ii)(D) of this section).

(iii) *Information about the covered transfer*—(A) *Required information.* The application must identify the type of covered transfer. For a covered transfer described in paragraph (c)(2)(i)(A), (B), or (C) of this section that is not a distribution, the application must include a description of the property transferred in the covered transfer, the amount of security-required gain, the amount realized, the adjusted basis in the property, and the maximum security amount. For a covered transfer described in paragraph (c)(2)(i)(A), (B), or (C) of this section that is a distribution, the application must include the amount of the distribution, a description of the property distributed (including cash), the amount of security-required gain, and the maximum security amount. For a covered transfer described in paragraph (c)(2)(i)(D) of this section, the application must include the amount of security-required gain and the maximum security amount. In each case, the application for the eligibility certificate must also identify the amount of security that has been provided and the amount of security-required gain for which the eligibility certificate is being obtained. If an

amount described in this paragraph is not known when the application is submitted, a security-required person may include a reasonable estimate of the amount if the estimate is determined no earlier than 120 days before the covered transfer and the security-required person also includes in the application documentation of the basis for the estimate (for example, a purchase contract).

(B) *Definition of amount realized.* The term *amount realized* means for a covered transfer described in paragraph (c)(2)(i)(A) of this section, the amount determined under § 1.1445–1(g)(5); for a covered transfer described in paragraph (c)(2)(i)(B) of this section, the amount determined under § 1.1446(f)–2(c)(2)(i) (or the amount determined using the alternative procedures under § 1.1446(f)–2(c)(2)(ii), disregarding any requirement to provide a certification) or § 1.1446(f)–4(c)(2)(i); and for a covered transfer described in paragraph (c)(2)(i)(C) of this section, the amount determined under section 1001(b).

(4) *Deferral agreement*—(i) *In general.* A *deferral agreement* is an agreement entered into between a security-required person and the IRS for the deferral of tax and provision of security. The term of the deferral agreement must not end sooner than 36 months after the due date (with extensions) for the filing of the security-required person's Federal income tax return for the taxable year that includes the date specified in section 1400Z–2(b)(1). The deferral agreement must conform to any template provided in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see §§ 601.601(d)(2) and 601.602 of this chapter).

(ii) *Minimum terms and conditions.* The minimum terms and conditions of a deferral agreement are provided in paragraphs (d)(4)(ii)(A) through (D) of this section. The deferral agreement must also include any additional terms and conditions provided in a template provided in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see §§ 601.601(d)(2) and 601.602 of this chapter).

(A) The security-required person will timely file a Federal income tax return and pay any tax liability due on security-required gain deferred under section 1400Z–2(a) and the regulations thereunder for each taxable year in which the security-required person is required to include the gain or a portion thereof in income under § 1.1400Z2(b)–1.

(B) The security-required person will report any security-required gain invested in a QOF held at any point during the taxable year in accordance with § 1.1400Z2(a)–1(d)(2).

(C) The security-required person provides security to the IRS in the amount required for the security-required gain for which the security-required person seeks to defer gain under section 1400Z–2(a). The security may be replaced during the term of the deferral agreement, to the extent provided in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see §§ 601.601(d)(2) and 601.602 of this chapter). Upon a failure to pay any tax due on security-required gain for which the security-required person seeks to defer gain under section 1400Z–2(a) when the tax is due or upon an event of default (as described in paragraph (d)(4)(iii) of this section) under the deferral agreement, the IRS may collect the entire amount of the liability by recourse to the security and may exercise any other rights and remedies of a secured party under applicable law.

(D) The security-required person appoints a U.S. person to act as the security-required person's limited agent for purposes of accepting communication related to the deferral agreement from the IRS, accepting service of process for the timely enforcement of the terms of the deferral agreement, and any other purposes specified in the deferral agreement (*U.S. agent*). See paragraph (d)(5) of this section for the agreement that the security-required person must enter into with the U.S. agent.

(iii) *Events of default.* The deferral agreement will specify what is considered a default, the circumstances that give rise to an event of default, and whether a notice of default and an opportunity to cure will be provided to the security-required person before an event of default arises. Defaults include, but are not limited to, a failure by an issuer of a letter of credit to continue to meet the requirements of paragraph (d)(6)(ii) of this section throughout the term of the deferral agreement; a determination by the IRS that the security does not otherwise adequately secure the interests of the IRS; a determination by the IRS that the U.S. agent agreement is no longer in effect; a resignation of the U.S. agent; a failure by the security-required person to file any required Federal income tax returns and information returns or pay any tax due during the term of the deferral agreement; and a failure by the security-required person to attach a copy of the eligibility certificate to any tax returns, information returns, forms, or other filings with the IRS as required in the deferral agreement. The deferral agreement will specify which defaults will require notification from the IRS and an opportunity to cure before a default becomes an event of default. For example, the deferral agreement will provide that a security-required person that fails to report any security-required gain invested in a QOF held at any point during the taxable year in accordance with § 1.1400Z2(a)–1(d)(2) for any given taxable year will be permitted to cure the default by making the report described in the first sentence of § 1.1400Z2(a)–1(d)(2) or establishing to the satisfaction of the Commissioner that an inclusion event described in § 1.1400Z2(b)–1(c) did not occur during that taxable year. The deferral agreement will specify the date of an event of default. See § 1.1400Z2(b)–1(c)(1)(v) for the consequences of an event of default under a deferral agreement.

(5) *U.S. agent agreement.* The security-required person must enter into a binding agreement with a U.S. agent (as defined in paragraph (d)(4)(ii)(D) of this section) authorizing the U.S. agent to act as an agent (*U.S. agent agreement*). The U.S. agent agreement must include the terms and conditions provided in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see §§ 601.601(d)(2) and 601.602 of this chapter). The U.S. agent agreement must be executed by the security-required person and the U.S. agent and must remain in effect for as long as the deferral agreement remains in effect.

(6) *Security*—(i) *In general.* The security-required person must provide to the IRS security described in paragraph (d)(6)(ii) of this section. The proposed security (and any required documents described in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see §§ 601.601(d)(2) and 601.602 of this chapter)) must generally be submitted to the IRS with the security-required person's application for an eligibility certificate. The maturity date or expiration of the security must not be earlier than 36 months after the due date (with extensions) for the filing of the security-required person's Federal income tax return for the taxable year that includes the date specified in section 1400Z–2(b)(1). The security cannot be accelerated, cancelled, or otherwise terminated before maturity, other than at the direction of, or with the consent of, the IRS. Additional terms and conditions for the security may be specified in forms or instructions or in publications or guidance published in

the Internal Revenue Bulletin (see §§ 601.601(d)(2) and 601.602 of this chapter). See paragraph (d)(7) of this section for determining the required amount of the security.

(ii) *Letter of credit.* The IRS may accept as security an irrevocable standby letter of credit that is issued by a U.S. bank that is categorized as well capitalized in accordance with applicable Federal banking regulations and regularly issues letters of credit in the ordinary course of business to customers other than security-required persons under this paragraph (d)(6), or any other financial institution acceptable to the IRS, as provided in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see §§ 601.601(d)(2) and 601.602 of this chapter).

(7) *Permitted deferral amount*—(i) *In general.* The *permitted deferral amount* is the amount for which an eligibility certificate is issued to a security-required person with respect to a security-required gain. If a security-required person provides security in an amount equal to the maximum security amount, the permitted deferral amount is the total amount of security-required gain. If a security-required person provides security in an amount less than the maximum security amount, the permitted deferral amount is the total amount of security-required gain multiplied by the ratio of the amount of security provided over the maximum security amount.

(ii) *Maximum security amount.* The term *maximum security amount* means—

(A) For a covered transfer described in paragraph (c)(2)(i)(A) of this section, the lesser of the amount realized (as defined in paragraph (d)(3)(iii)(B) of this section) multiplied by the rate specified in section 1445(a) (or, for a covered transfer subject to section 1445(e)(1), (e)(2), or (e)(6), the security-required gain multiplied by the rate specified under the applicable provision) or the security-required gain multiplied by the highest rate of tax applicable to the gain, taking into account the type of property, holding period, and classification of the security-required person (treating a security-required person that is a partnership or trust as an individual for this purpose);

(B) For a covered transfer described solely in paragraph (c)(2)(i)(B) of this section, the lesser of the amount realized (as defined in paragraph (d)(3)(iii)(B) of this section) multiplied by the rate specified in section 1446(f)(1), or the security-required gain multiplied by the highest rate of tax applicable to the gain, taking into account the type of property, holding period, and classification of the security-required person (treating a security-required person that is a partnership or trust as an individual for this purpose);

(C) For a covered transfer described in paragraph (c)(2)(i)(C) of this section, the security-required gain multiplied by the highest rate of tax applicable to the gain, taking into account the type of property and the specified partnership's holding period, and treating the specified partnership as an individual for this purpose; or

(D) For a covered transfer described in paragraph (c)(2)(i)(D) of this section, the security-required gain multiplied by the highest rate of tax applicable to the gain, taking into account the type of property, the holding period and classification of the security-required person (treating a security-required person that is a partnership or trust as an individual for this purpose).

(iii) *Example.* SRP, an individual who is a security-required person, disposes of U.S. real property that SRP has held for more than one year and that has a basis of $80x in a covered transfer subject to withholding under section 1445(a). The amount realized is $200x, and the amount of the security-required gain is $120x of long-term capital gain ($200x amount realized less $80x basis). Because the covered transfer is described in paragraph (c)(2)(i)(A) of this section, the maximum security amount is $24x (the lesser of $30x (the amount realized of $200x multiplied by the rate specified in section 1445(a), (in 2021, 15%)) and $24x (the security-required gain of $120x multiplied by the highest rate of tax applicable to the gain taking into account the type of property, holding period and the classification of the security-required person (in 2021, 20%))). SRP applies for and receives an eligibility certificate in accordance with paragraph (d)(1). SRP provides security in the amount of $15x. Because SRP has provided security in an amount less than the maximum security amount, the eligibility certificate will be issued for less than the total amount of security-required gain. The permitted deferral amount shown on the eligibility certificate is the total amount of security-required gain ($120x) multiplied by the ratio of the amount of security provided by SRP ($15x) over the maximum security amount ($24x). Therefore, SRP will obtain an eligibility certificate for a permitted deferral amount of $75x ($120x multiplied by 62.5%).

(e) *Example.* The example in this paragraph (e) illustrates the rules in this section and § 1.1400Z2(a)–1(a)(3).

(1) *Facts.* Partnership P is an eligible taxpayer within the meaning of § 1.1400Z2(a)–1(b)(13) of this section. The relevant events take place during Years 1 through 3, all of which end earlier than 2027. At all times during those years, P was owned by 10 equal partners.

(i) *Three eligible gains.* During Year 2, P recognized three gains—G_1, G_2, and G_3—for, respectively, $750,000 on September 1, $2 million on October 1, and $2 million on December 20. All three gains were eligible gains within the meaning of § 1.1400Z2(a)–1(b)(11) and the transactions that gave rise to the gains were subject to withholding under section 1445 or 1446.

(ii) *Ownership test.* On September 1, Year 2, P satisfied the ownership test in paragraph (b)(3)(i) of this section because on that date partners O_1 through O_7 were United States persons, and partners O_8 through O_{10} were foreign individuals. On October 1, Year 2, P did not satisfy the ownership test in paragraph (b)(3)(i) of this section because as of that date partners O_9 and O_{10} had been replaced by O_{11} and O_{12}, who were both United States persons. On December 20, Year 2, P satisfied the ownership test in paragraph (b)(3)(i) of this section because as of that date partners O_{11} and O_{12} had been replaced by O_{13} and O_{14}, which were both foreign corporations.

(iii) *Closely-held test.* At all times during Years 1 through 2, P satisfied the closely-held test in paragraph (b)(3)(ii) of this section because P was owned by 10 partners.

(iv) *Asset test.* At all times during Years 1 through 3, P did not satisfy the asset test in paragraph (b)(3)(iii) of this section because P had total assets in excess of $100 million, of which less than $25 million was United States real property interests or assets used in the conduct of a trade or business within the United States.

(v) *Investment in a QOF and election to defer.* On January 15 of Year 3, P invested $4.75 million in a QOF, and on P's timely filed Federal income tax return for Year 2, P indicated that it was electing to defer all three gains under § 1.1400Z2(a)–1(a). These three elections are proper unless they are barred by § 1.1400Z2(a)–1(a)(3).

(2) *Analysis*—(i) *G_1.* P satisfies the ownership test as of the date of the transfer. P also satisfies the closely-held test during the look-back period for G_1, but does not satisfy the asset test during the look-back period for G_1. P does not satisfy the gain test in paragraph (b)(3)(iii) of this section because the amount of the G_1 gain is less than $1 million. As a result, P is not a specified partnership with respect to G_1. Accordingly, P is not a security-required person with respect to G_1, and, thus, P does not need an eligibility certificate with respect to G_1 in order to make a proper deferral election with respect to G_1.

(ii) *G_2.* Unlike G_1, G_2 ($2 million) is large enough to satisfy the gain test in paragraph (b)(3)(iii) of this section ($1 million or more). P also satisfies the closely-held test during the look-back period for G_2. However, P does not satisfy the ownership test as of the date of transfer. Accordingly, P is not a specified partnership with respect to G_2 and, thus, P is not a security-required person with respect to G_2. P does not need an eligibility certificate with respect to G_2 in order to make a proper deferral election with respect to G_2.

(iii) *G_3.* P satisfies the ownership test as of the date of the transfer. P also satisfies the closely-held test during the look-back period for G_3. Also, G_3 is large enough to satisfy the gain test. Accordingly, P is a security-required person with respect to G_3, and G_3 is

a security-required gain. Consequently, P may not elect to defer G_3 unless, not later than the date on which P files its Federal income tax return for Year 2, P has received an eligibility certificate with respect to G_3. Even if P has received such an eligibility certificate, P may not elect to defer a larger amount of G_3 than the permitted deferral amount shown on the eligibility certificate.

(f) *Applicability date.* This section applies to any covered transfer that occurs after [DATE OF PUBLICATION OF FINAL RULE].

■ **Par. 5.** Section 1.1400Z2(b)–1 is amended by:

■ 1. Revising paragraph (c)(1)(iv).

■ 2. Adding paragraph (c)(1)(v).

■ 3. Revising paragraph (j)(1).

■ 4. Adding paragraph (j)(3).

The revisions and additions read as follows:

§ 1.1400Z2(b)–1 Inclusion of gains that have been deferred under section 1400Z–2(a).

* * * * *

(c) * * *

(1) * * *

(iv) A QOF in which an eligible taxpayer holds a qualifying investment loses its status as a QOF; or

(v) An event of default occurs under a deferral agreement (described in § 1.1400Z2(a)–2(d)(4)) entered into between a security-required person and the IRS (in which case the deferred gain to be included is the gain whose deferral was made possible by the eligibility certificate that was based on the agreement).

* * * * *

(j) * * *

(1) *In general.* Except as provided in paragraph (j)(3) of this section, the provisions of this section are applicable for taxable years beginning after March 13, 2020.

* * * * *

(3) *Specific rules.* Paragraph (c)(1)(v) of this section applies to any deferral agreement (as defined in § 1.1400Z2(a)–2(d)(4)) entered into after [DATE OF PUBLICATION OF FINAL RULE].

■ **Par. 6.** Section 1.1400Z2(d)–1 is amended by:

■ 1. Revising paragraphs (d)(3)(v)(D) and *(e)(1).*

■ 2. Redesignating paragraphs (e)(2) introductory text and (e)(2)(i) and (ii) as paragraphs (e)(2)(i) and (e)(2)(i)(A) and (B).

■ 3. Adding a subject heading for newly redesignated paragraph (e)(2).

■ 4. Adding new paragraph (e)(2)(ii).

The revisions and additions read as follows:

§ 1.1400Z2(d)–1 Qualified opportunity funds and qualified opportunity zone businesses.

* * * * *

(d) * * *

(3) * * *

(v) * * *

(D) *Federally declared disasters.* If the qualified opportunity zone business is located in a qualified opportunity zone impacted by a federally declared disaster (as defined in section 165(i)(5)(A)), the qualified opportunity zone business may receive not more than an additional 24 months to expend its working capital assets, as long as it otherwise meets the requirements of paragraph (d)(3)(v) of this section. For purposes of the preceding sentence, meeting the requirements of paragraph (d)(3)(v) of this section may be determined by reference either to the original amount of working capital assets designated in writing under paragraph (d)(3)(v)(A) of this section and reasonable written schedule under paragraph (d)(3)(v)(B) of this section or to a new or revised written designation and written schedule that satisfy the requirements of paragraph (d)(3)(v)(A) and (B) of this section, respectively. A new or revised written designation of the amount of working capital assets and reasonable written schedule for expending that amount may be used only if adopted not later than 120 days after the close of the incident period, as defined in 44 CFR 206.32(f), with respect to that disaster. In determining whether a new or revised schedule satisfies the requirements of paragraph (d)(3)(v)(B) of this section, the planned completion of spending must take into account the up-to-31 month period originally allowed under paragraph (d)(3)(v)(B) of this section, plus the up-to-24 additional months provided in this paragraph (d)(3)(v)(D).

* * * * *

(e) * * *

(1) *In general.* Except as provided in paragraph (e)(2) of this section, the provisions of this section are applicable for taxable years beginning after March 13, 2020.

(2) *Exceptions.* * * *

(ii) *Flexibility with respect to working capital safe harbor plans in the event of a federally declared disaster.* The final three sentences in paragraph (d)(3)(v)(D) are applicable for taxable years beginning after [DATE OF PUBLICATION OF FINAL RULE].

■ **Par. 7.** Section 1.1445–3 is amended by adding paragraph (e)(5) to read as follows:

§ 1.1445–3 Adjustments to amount required to be withheld pursuant to withholding certificate.

* * * * *

(e) * * *

(5) *Special rule for gain deferred under section 1400Z–2(a).* The Internal Revenue Service will issue a withholding certificate under this paragraph (e) that excuses withholding or that permits a transferee to withhold a reduced amount if the transferor has obtained an eligibility certificate under § 1.1400Z2(a)–2 from the IRS with respect to the transfer. The amount by which the transferee may reduce the withholding (including a reduction to zero) is the amount of security provided on the eligibility certificate. If this paragraph (e)(5) applies, the requirements in paragraphs (e)(1) through (e)(4) of this section are deemed to have been satisfied. This paragraph (e)(5) applies to any covered transfer defined in § 1.1400Z2(a)–2(c)(2) that occurs after [DATE OF PUBLICATION OF FINAL RULE].

* * * * *

■ **Par. 8.** Section 1.1446–3 is amended by revising paragraph (b)(2)(i)(B)(*1*) introductory text to read as follows:

§ 1.1446–3 Time and manner of calculating and paying over the 1446 tax.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) * * *

(*1*) To the extent applicable, in computing the 1446 tax due with respect to a foreign partner, a partnership may consider a certificate received from such partner under § 1.1446–6(c)(1)(i), (ii) or (iv) and the amount of state and local taxes permitted to be considered under § 1.1446–6(c)(1)(iii). For this purpose, a partnership shall first consider under § 1.1446–6(c)(1)(iv) the partner's permitted deferral amounts and then annualize the partner's allocable share of the partnership's items of effectively connected income, gain, deduction, and loss before—

* * * * *

■ **Par. 9.** Section 1.1446–6 is amended by:

■ 1. Revising paragraph (a)(1).

■ 2. Revising the first sentence of paragraph (a)(2).

■ 3. Adding a sentence at the end of paragraph (c)(1).

■ 4. Adding paragraph (c)(1)(iv).

■ 5. Adding a sentence at the end of paragraph (c)(2)(i).

■ 6. Revising the seventh sentence of paragraph (d)(3)(i).

■ 7. Adding a sentence at the end of paragraph (f).

The revisions and additions read as follows:

§ 1.1446–6 Special rules to reduce a partnership's 1446 tax with respect to a foreign partner's allocable share of effectively connected taxable income.

(a) *In general*—(1) *Purpose and scope.* This section provides rules regarding when a partnership required to pay withholding tax under section 1446 (1446 tax), or an installment of 1446 tax, may consider certain partner-level deductions and losses and eligibility certificates under § 1.1400Z2(a)–2(d) in computing its 1446 tax obligation under § 1.1446–3. This section also provides rules regarding when a partnership is not required to pay a de minimis amount of 1446 tax due with respect to a nonresident alien individual partner. A partnership determines the applicability of the rules of this section on a partner-by-partner basis for each installment period and when completing its Form 8804, ''Annual Return for Partnership Withholding Tax (Section 1446),'' and paying 1446 tax for the partnership taxable year. Except with respect to certain state and local taxes paid by the partnership on behalf of the partner, to apply the rules of this section with respect to a foreign partner, the partnership must receive a certificate described in § 1.1446–6(c)(1)(i) and (ii) from such partner for each partnership taxable year or an eligibility certificate described in § 1.1400Z2(a)–2(d) for each security-required gain (as defined in § 1.1400Z2(a)–2(c)(1)). Paragraph (b) of this section identifies the foreign partners to which this section applies. Paragraph (c) of this section identifies the deductions and losses and security-required gains that a foreign partner may certify to the partnership as well as the state and local taxes paid by the partnership on behalf of the foreign partner that can be taken into account without a certification, and establishes an exception that permits a partnership to not pay a de minimis amount of 1446 tax with respect to a nonresident alien partner. Paragraph (c) of this section also sets forth the requirements for a valid certificate. Paragraphs (a)(2) and (d) of this section establish when a partnership may rely on and consider a foreign partner's certificate in computing its 1446 tax, and the effects of relying on such a certificate. Paragraph (d) of this section also describes the effects of a partnership relying on a certificate (including an updated certificate) and the reporting requirements of a partnership with respect to a certificate. Paragraph (e) of this section sets forth examples that illustrate the rules of this section. Paragraph (f) of this section provides the Effective/Applicability date. Paragraph (g) of this section provides a transition rule.

(2) *Reasonable reliance on a certificate.* Subject to § 1.1446–2 and the rules of this section, a partnership receiving a certificate (including an updated certificate or status update under paragraph (c)(2)(ii)(B) of this section) of deductions and losses or an eligibility certificate from a partner provided in accordance with the provisions of this section may reasonably rely on the certificate of deductions and losses (to the extent of the certified deductions and losses or other representations set forth in the certificate) or eligibility certificate (to the extent of the permitted deferral amount determined in § 1.1400Z2(a)–2(d)(7)) until such time that it has actual knowledge or reason to know that the certificate is defective or that the time for receiving an updated certificate or status update from the partner under paragraph (c)(2)(ii)(B) of this section has expired. * * *

* * * * *

(c) * * *

(1) * * * Under paragraph (c)(1)(iv) of this section, a partnership may take into account eligibility certificates submitted by a foreign partner with respect to security-required gains.

* * * * *

(iv) *Consideration of eligibility certificates.* A partner that is a nonresident alien or foreign corporation that satisfies the requirements of § 1.1400Z2(a)–1(a)(3) may provide a copy of an eligibility certificate, as defined in § 1.1400Z2(a)–2(d)(1), for each of the partner's security-required gains, as defined in § 1.1400Z2(a)–2(c)(1).

* * * * *

(2) * * *

(i) * * * A partner's certification under paragraph (c)(1)(iv) of this section shall be the eligibility certificate described in § 1.1400Z2(a)–2(d)(1).

* * * * *

(d) * * *

(3) * * *

(i) * * * For an installment period other than the first installment period for which the partnership considers a foreign partner's certificate or updated certificate, the partnership may, instead of attaching any partner's certificate, attach to Form 8813 a list containing the name, TIN, the amount of certified deductions and losses, the amount of gain excluded resulting from an eligibility certificate, and the amount of state and local taxes the partnership may consider under paragraph (c)(1)(iii) of this section for each foreign partner whose certificate was relied upon.

* * * * *

(f) * * * Paragraph (c)(1)(iv) of this section and the references in paragraphs (a)(1), (a)(2), (c)(1), and (d)(3)(i) of this section to eligibility certificates, covered transfers and security-required gains, apply to any covered transfers (as defined in § 1.1400Z2(a)–2(c)(2)) occurring after [DATE OF PUBLICATION OF FINAL RULE].

* * * * *

■ **Par. 10.** Section 1.1446–7 is amended by adding a sentence at the end of the section to read as follows:

§ 1.1446–7 Effective/Applicability date.

* * * The references in § 1.1446–3(b)(2)(i)(B)(*1*) to § 1.1446–6(c)(1)(iv) apply to partnership taxable years ending after [DATE OF PUBLICATION OF FINAL RULE].

■ **Par. 11.** Section 1.1446(f)–2 is amended by adding paragraphs (b)(8) and (c)(5) and by adding a sentence to the end of paragraph (f) to read as follows:

§ 1.1446(f)–2 Withholding on the transfer of a non-publicly traded partnership interest.

* * * * *

(b) * * *

(8) *Gain deferred under section 1400Z–2(a).* A transferee may rely on a certification from the transferor that includes a copy of an eligibility certificate (as described in § 1.1400Z2(a)–2(d)) with respect to the transfer for an amount of security that is greater than or equal to the maximum security amount. See paragraph (c)(5) of this section for when an eligibility certificate provides an amount of security that is less than the maximum security amount.

(c) * * *

(5) *Gain deferred under section 1400Z–2(a).* A transferee may rely on a certification from a transferor that includes a copy of an eligibility certificate (as described in § 1.1400Z2(a)–2(d)) with respect to the transfer to reduce the amount required to be withheld under this section by the amount of security provided on the eligibility certificate.

* * * * *

(f) *Applicability date.* * * * Paragraphs (b)(8) and (c)(5) of this section apply to any covered transfer (as defined in § 1.1400Z2(a)–2(c)(2)) that

occurs after [DATE OF PUBLICATION OF FINAL RULE].

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2021–06143 Filed 4–12–21; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0077]

RIN 1625–AA11

Regulated Navigation Area; Biscayne Bay Causeway Island Slip, Miami Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a Regulated Navigation Area over certain navigable waters of the Biscayne Bay Causeway Island Slip, immediately west of the Coast Guard Base Miami Beach, Miami Beach, FL. This action is necessary to provide for the safety of life and federal property on this navigable water. This proposed rulemaking would require all persons and vessels to transit the Regulated Navigation Area at a speed that creates minimum wake, seven miles per hour or less, to safeguard damage to Coast Guard assets, disrupting operations, and/or injuring Coast Guard personnel. Additionally, this proposed rulemaking would prohibit vessels from passing other vessels making way within the regulated area. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 14, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0077 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Samuel Rodriguez, Sector Miami Waterways Management Division, Coast Guard at 305–535–4317 or by email *Samuel.Rodriguez-Gonzalez@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

In October 2020, the Fisher Island Ferry Communities Association relocated its ferry terminal to the Biscayne Bay Causeway Island Slip (Slip), west of the Coast Guard Base Miami Beach, Miami Beach, FL. The Slip is the primary terminal for the movement of residents, workers, and goods from Terminal Island to Fisher Island. Prior to October 2020, maritime traffic in the Biscayne Bay Causeway Island Basin (Basin) was limited in scope to occasional private yachts and Coast Guard assets. The addition of ferry traffic at the Slip has resulted in a substantial increase in maritime traffic in the Basin. The Basin has a length of approximately 380 yards and a width of approximately 97 yards. The increase in traffic, particularly of the Fisher Island Ferry, presents a hazard to Coast Guard assets operating in the Basin as the ferries occasionally pass within the Basin, dangerously close to Coast Guard assets. Additionally, and particularly when passing within the Basin, the ferries create a disrupting, and at times dangerous wake, adversely affecting Coast Guard routine operations and personnel. The passing maneuvers and resultant wake also create hazardous conditions during certain cutter operations, such as onloading and offloading of ammunition or refueling. The Coast Guard's Seventh District Commander has determined the increased ferry traffic, passing maneuvers, and resultant wake presents a safety and operational concern to Coast Guard personnel and assets moored in the Biscayne Bay Causeway Island Basin.

The purpose of this regulation is to ensure navigational safety, protection of Coast Guard assets and personnel, and to facilitate safe execution of Coast Guard statutory missions. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The Coast Guard's Seventh District Commander is proposing to establish a permanent Regulated Navigation Area that would require all persons and vessels to transit the regulated area at a speed that creates minimum wake, seven miles per hour or less, to safeguard damage to Coast Guard assets, disrupting operations, and/or injuring Coast Guard personnel. Additionally, this proposed rulemaking would prohibit vessels from passing other vessels making way within the regulated area. This Regulated Navigation Area covers all navigable waters within the Biscayne Bay Causeway Island Slip, immediately west of the Coast Guard Base Miami Beach, Miami Beach, FL.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, and location of the Regulated Navigation area. The Regulated Navigation Area will only affect vessels entering, and passing within, the Biscayne Bay Causeway Island Slip in Miami Beach, Miami Beach, FL. Vessels will continue to operate within the Biscayne Bay Causeway Island Slip with the only restriction being the requirement to operate at speeds below seven miles per hour and avoid passing other vessels making way within the regulated area. Moreover, upon activating the Regulated Navigation Area, the Coast Guard will notify the local maritime community through various means including, Local Notice to Mariners and Broadcast Notice to Mariners issued on VHF–FM marine radio channel 16.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not

have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to operate within the Regulated Navigation Area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a Regulated Navigation Area requiring all persons and vessels to transit the regulated area at a speed that creates minimum wake, seven miles or less, and to avoid passing other vessels making way within the regulated area. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.789 to read as follows:

§ 165.789 Regulated Navigation Area; Biscayne Bay Causeway Island Slip, Miami Beach, FL.

(a) *Regulated Area.* The following area is a Regulated Navigation Area: All

waters of Biscayne Bay Causeway Island Slip within the following points: Beginning at Point 1 in position 25°46′18″ N, 080°08′50″ W; thence east to Point 2 in position 25°46′19″ N, 080°08′47″ W; thence southeast to Point 3 in position 25°46′10″ N, 080°08′41″ W; thence west to Point 4 in position 25°46′10″ N, 080°08′45″ W; thence back to origin at Point 1.

(b) *Regulations.* (1) The general regulations governing Regulated Navigation Areas found in 33 CFR 165.10, 165.11, and 165.13, including the Regulated Navigation Area described in paragraph (a) of this section and the following regulations, apply.

(2) All persons and vessels are required to transit the Regulated Navigation Area at a speed that creates minimum wake, seven miles per hour or less, to prevent damage to Coast Guard assests, disrupting operations, and/or injuring Coast Guard personnel.

(3) All persons and vessels are required to avoid passing other vessels making way within the Regulated Navigation Area.

(c) *Enforcement.* The Coast Guard may be assisted in the patrol and enforcement of the Regulated Navigation Area by other Federal, State, and local agencies.

Dated: April 6, 2021.

E.C. Jones,

Rear Admiral, U.S. Coast Guard, District Commander.

[FR Doc. 2021–07606 Filed 4–13–21; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register
Vol. 86, No. 70
Wednesday, April 14, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, April 16, 2021, 12:00 p.m. EST.

ADDRESSES: Meeting to take place by telephone and is open to the public by telephone: 1–866–556–2537, Conference ID #896–5601. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, April 16th, 2021, is *https://www.streamtext.net/player?event=USCCR*. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

FOR FURTHER INFORMATION CONTACT: Angelia Rorison: 202–376–7700; *publicaffairs@usccr.gov*.

SUPPLEMENTARY INFORMATION:

Meeting Agenda

I. Motion to Approve Commissioner Norma Cantú to Serve as USCCR Chair
II. Approval of Agenda
III. Business Meeting
  A. Discussion and Vote on Statement of Walter E. Williams
  B. Discussion and Vote to continue the Policy of Rebuttals and Surrebuttals
  C. Discussion and Vote to suspend Speaker Series
  D. Discussion and Agreement to Appoint Bipartisan Commissioners to EAC
  E. Discovery and Vote on FEMA Report Discovery Plan
  F. Management and Operations
  • Staff Director's Report
IV. Adjourn Meeting

Dated: April 9, 2021.

Angelia Rorison,

USCCR Media and Communications Director.

[FR Doc. 2021–07680 Filed 4–12–21; 4:15 pm]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Pennsylvania Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting on Monday April 26, 2021 at 10:00 a.m. Eastern time. The Committee will discuss civil rights concerns in the state.

DATES: The meeting will take place on Monday April 26, 2021 at 10:00 a.m. Eastern time.

ADDRESSES:

Online Regisration (Audio/Visual): https://bit.ly/31Yom3G.

Telephone (Audio Only): Dial 800–360–9505 USA Toll Free; Access code: 199 229 3904.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. Committee meetings are available to the public through the above call in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Pennsylvania Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Roll Call
Civil Rights in Pennsylvania
Future Plans and Actions
Public Comment
Adjournment

Dated: April 8, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–07584 Filed 4–13–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–131, C–570–132]

Twist Ties From the People's Republic of China: Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing antidumping duty (AD) and countervailing duty (CVD) orders on twist ties from the People's Republic of China (China).

DATES: Applicable April 14, 2021.

FOR FURTHER INFORMATION CONTACT: Alex Wood (AD) or Ajay Menon (CVD), AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1959 or (202) 482–1993, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(d) and 735(d) of the Tariff Act of 1930, as amended (the Act), on February 22, 2021, Commerce published its affirmative final determination of sales at less-than-fair-value (LTFV) [1] and its affirmative final determination that countervailable subsidies are being provided to producers and exporters of twist ties from China.[2] On April 8, 2021, the ITC notified Commerce of its final affirmative determinations that an industry in the United States is materially injured by reason of LTFV imports and subsidized imports of twist ties from China, within the meaning of sections 705(b)(1)(A)(i) and 735(b)(1)(A)(i) of the Act.[3]

Scope of the Orders

The products covered by these orders are twist ties from China. For a complete description of the scope of the orders, *see* Appendix to this notice.

AD Order

On April 8, 2021, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determinations that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of twist ties from China.[4] Therefore, Commerce is issuing this AD order in accordance with sections 735(c)(2) and 736 of the Act. Because the ITC determined that imports of twist ties from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China entered, or withdrawn from warehouse, for consumption are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of twist ties from China. Antidumping duties will be assessed on unliquidated entries of twist ties from China entered, or withdrawn from warehouse, for consumption on or after December 10, 2020, the date of publication of the *LTFV Preliminary Determination,* but will not be assessed on entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determinations, as further described below.[5]

Continuation of Suspension of Liquidation—AD

In accordance with section 736 of the Act, we will instruct CBP to continue to suspend liquidation on all relevant entries of twist ties from China entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**. These instructions suspending liquidation will remain in effect until further notice. For each producer and exporter combination, Commerce will also instruct CBP to require cash deposits for estimated antidumping duties equal to the cash deposit rates listed below.

Accordingly, effective on the date of publication of the ITC's final affirmative injury determinations, CBP will require, at the same time as an importer of record would normally deposit estimated duties on the subject merchandise, a cash deposit for each entry of subject merchandise equal to the cash deposit rates listed below.[6] As stated in the *LTFV Final Determination,* Commerce made certain adjustments for export subsidies from the *CVD Final Determination* to the estimated weighted-average dumping margin to determine each of the cash deposit rates.

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Rongfa Plastic Products Co., Ltd. (also known as Zhenjiang Rongfa Plastic Co., Ltd).	Rongfa Plastic Products Co., Ltd. (also known as Zhenjiang Rongfa Plastic Co., Ltd).	72.96	62.42
Tianjin Kyoei Packaging Supplies Co., Ltd	Tianjin Kyoei Packaging Supplies Co., Ltd	72.96	62.42
China-Wide Entity [7]		72.96	62.42

Provisional Measures—AD

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except that Commerce may extend the four-month period to no more than six months at the request of exporters representing a significant proportion of exports of the subject merchandise. Commerce published its *LTFV Preliminary Determination* on December 10, 2020.[8] Commerce's *LTFV Final Determination* published on February 22, 2021.[9] Therefore, the four-month period beginning on the date of publication of the *LTFV Preliminary Determination* ended on April 8, 2021.

Therefore, in accordance with section 733(d) of the Act, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of twist ties from China entered, or withdrawn from warehouse, for consumption after April 8, 2021, the date on which the provisional measures expired, through the day preceding the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of

[1] *See Twist Ties from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 86 FR 10536 (February 22, 2021) (*LTFV Final Determination*).

[2] *See Twist Ties from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 86 FR 10542 (February 22, 2021) (*CVD Final Determination*).

[3] *See* ITC's Letter, ''Notification of ITC Final Determinations,'' dated April 8, 2021 (ITC Notification).

[4] *Id.*

[5] *See Twist Ties from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 85 FR 79468 (December 10, 2020) (*LTFV Preliminary Determination*).

[6] *See* section 736(a)(3) of the Act.

[7] The China-wide entity includes Zhenjiang Hongda Commodity Co., Ltd. and Zhenjiang Zhonglian I/E Co., Ltd.

[8] *See LTFV Preliminary Determination.*

[9] *See LTFV Final Determination.*

publication of the ITC's final affirmative injury determinations in the **Federal Register**.

CVD Order

On April 8, 2021, in accordance with section 705(d) of the Act, the ITC notified Commerce of its final determinations that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of imports of twist ties from China.[10] Therefore, Commerce is issuing this CVD order in accordance with sections 705(c)(2) and 706 of the Act. Because the ITC determined that imports of twist ties from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China entered, or withdrawn from warehouse, for consumption are subject to the assessment of countervailing duties.

Therefore, in accordance with section 706(a)(1) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce, countervailing duties on all relevant entries of twist ties from China. Countervailing duties will be assessed on unliquidated entries of twist ties from China which are entered, or withdrawn from warehouse, for consumption on or after December 1, 2020, the date of publication of the *CVD Preliminary Determination,*[11] but will not be assessed on entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determinations, as further described below.

Suspension of Liquidation—CVD

In accordance with section 706 of the Act, we will instruct CBP to reinstitute suspension of liquidation on all relevant entries of twist ties from China, effective on the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**, and to assess, upon further instruction by Commerce, pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rate for the subject merchandise. These instructions suspending liquidation will remain in effect until further notice. Commerce will also instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determinations, CBP will require, at the same time as importers would normally deposit estimated duties on the subject merchandise, a cash deposit for each entry of subject merchandise equal to the subsidy rates listed below.[12] The all-others rate applies to all producers or exporters not specifically listed below, as appropriate.

Company	Subsidy rate (percent)
Dongguan Guanqiao Industrial Co., Ltd	111.96
Foshan Shunde Ronggui Yingli Industrial Co., Ltd	111.96
Yiwu Kurui Handicraft Co. Ltd	111.96
Zhenjiang Hongda Commodity Co. Ltd	111.96
Zhenjiang Zhonglian VE Co., Ltd	111.96
All Others	111.96

Provisional Measures—CVD

Section 703(d) of the Act states that suspension of liquidation instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months. Commerce published its *CVD Preliminary Determination* on December 1, 2020. Therefore, the provisional measures period, beginning on the date of publication of the *CVD Preliminary Determination,* ended on March 30, 2021. Pursuant to section 707(b) of the Act, the collection of cash deposits at the rate listed above will begin on the date of publication of the ITC's final affirmative injury determinations.

Therefore, in accordance with section 703(d) of the Act, Commerce instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of twist ties from China entered, or withdrawn from warehouse, for consumption after March 30, 2021, the date on which the provisional measures expired, through the day preceding the date of publication of the ITC's final injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**.

Notifications to Interested Parties

This notice constitutes the AD and CVD orders with respect to twist ties from China pursuant to sections 706(a) and 736(a) of the Act. Interested parties can find a list of orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are published in accordance with sections 706(a) and 736(a) of the Act and 19 CFR 351.211(b).

Dated: April 8, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The merchandise covered by these orders consists of twist ties, which are thin, bendable ties for closing containers, such as bags, bundle items, or identifying objects. A twist tie in most circumstances is comprised of one or more metal wires encased in a covering material, which allows the tie to retain its shape and bind against itself. However, it is possible to make a twist tie with plastic and no metal wires. The metal wire that is generally used in a twist tie is stainless or galvanized steel and typically measures between the gauges of 19 (.0410″ diameter) and 31 (.0132″) (American Standard Wire Gauge). A twist tie usually has a width between .075″ and 1″ in the cross-machine direction (width of the tie—measurement perpendicular with the wire); a thickness between .015″ and .045″ over the wire; and a thickness between .002″ and .020″ in areas without wire. The scope includes an all-plastic twist tie containing a plastic core as well as a plastic covering (the wing) over the core, just like paper and/or plastic in a metal tie. An all-plastic twist tie (without metal wire) would be of the same measurements as a twist tie containing one or more metal wires. Twist ties are commonly available individually in pre-cut lengths (''singles''), wound in large spools to be cut later by machine or hand, or in perforated sheets of spooled or single twist ties that are later slit by machine or by hand (''gangs'').

The covering material of a twist tie may be paper (metallic or plain), or plastic, and can be dyed in a variety of colors with or without printing. A twist tie may have the same covering material on both sides or one side of paper and one side of plastic. When comprised of two sides of paper, the paper material is bound together with an adhesive or plastic. A twist tie may also have a tag or label attached to it or a pre-applied adhesive attached to it.

Excluded from the scope of the orders are twist ties packaged with bags for sale together where the quantity of twist ties does not exceed twice the number of bags in each package. Also excluded are twists ties that constitute part of the packaging of the imported product, for example, merchandise anchored/secured to a backing with twist ties in the retail package or a bag of bread that is closed with a twist tie.

Twist ties are imported into the United States under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8309.90.0000 and 5609.00.3000. Subject merchandise may also enter under HTSUS subheadings 3920.51.5000, 3923.90.0080, 3926.90.9990, 4811.59.6000, 4821.10.2000, 4821.10.4000, 4821.90.2000, 4821.90.4000, and 4823.90.8600. These HTSUS

[10] *See* ITC Notification.

[11] *See Twist Ties from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 85 FR 77167 (December 1, 2020) (*CVD Preliminary Determination*).

[12] *See* section 706(a)(3) of the Act.

subheadings are provided for reference only. The written description of the scope of the orders is dispositive.

[FR Doc. 2021–07630 Filed 4–13–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–825]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Ozdemir Boru Profil San. Ve Tic. Ltd. Sti. (Ozdemir), exporter/producer of heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Turkey (Turkey), received *de minimis* net countervailable subsidies during the period of review, January 1, 2018, through December 31, 2018. Commerce is also rescinding this review with regard to eight companies for which timely requests for withdrawal of the request for review were filed by Independence Tube Corporation and Southland Tube, both Nucor Pipe Mills companies (collectively, the petitioners).

DATES: Applicable April 14, 2021.

FOR FURTHER INFORMATION CONTACT: Jaron Moore or Janae Martin, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3640 or (202) 482–0238, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2019, Commerce published a notice of opportunity to request an administrative review of the order on HWR pipes and tubes from Turkey for the period of January 1, 2018, through December 31, 2018.[1] On September 30, 2019, Commerce received timely requests for an administrative review from the petitioners and Ozdemir, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b).[2] Commerce received no other requests for administrative review.

On November 12, 2019, pursuant to these requests, and in accordance with 19 CFR 351.221(c)(1)(i), Commerce published a notice in the **Federal Register** initiating an administrative review of the CVD order on HWR pipes and tubes from Turkey.[3] On February 10, 2020, the petitioners timely withdrew their request for an administrative review with respect to Agir Haddecilik A.S., Cag Celik Demir ve Celik Endustri A.S., Cinar Boru Profil San Ve Tic. A.S., Mescier Dis Ticaret Ltd. Sti., MTS Lojistik ve Tasimacilik Hizmetleri TIC A.C. Istanbul, Noksel Celik Boru Sanayi A, SEBA Dis Ticaret AS., and Tosyali Toyo Celik A.S.[4] As a result, the only company for which the request for review was not withdrawn was Ozdemir.

On January 27, 2021, Commerce published the *Preliminary Results* of the administrative review with respect to Ozdemir.[5] Commerce gave interested parties an opportunity to comment on the *Preliminary Results*.[6] No interested parties submitted comments. Commerce has conducted this review in accordance with section 751(a)(1)(A) of the Act.

Scope of the Order

The products covered by the order are shipments of certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–500, grade B specifications, or comparable domestic or foreign specifications.

Included products are those in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceed the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Changes Since the Preliminary Results

As no parties submitted comments on the *Preliminary Results,* we made no changes to the subsidy calculations for Ozdemir in the final results of this review.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. The petitioners' withdrawal request was timely submitted, and no other interested party requested an administrative review of the eight companies named above. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review of the CVD order on HWR pipes and tubes from Turkey, in part, with respect to the aforementioned eight companies.

Final Results of Administrative Review

In accordance with section 777A(e)(1) of the Act and 19 CFR 351.221(b)(5), we determine that the following net countervailable subsidy rate exists for Ozdemir for the period January 1, 2018, through December 31, 2018: [7]

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 45949 (September 3, 2019).

[2] *See* Ozdemir's Letter, ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Review Request for Ozdemir Boru Profil San. Ve Tic. Ltd. Sti.,'' dated September 30, 2019; *see also* Petitioners' Letter, ''Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Request for Administrative Review,'' dated September 30, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 61011 (November 12, 2019).

[4] *See* Petitioners' Letter, ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: Partial Withdrawal of Request for Administrative Review,'' dated February 10, 2020.

[5] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2018,* 86 FR 7251 (January 27, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[6] *See Preliminary Results,* 86 FR at 7252.

[7] We have made no changes to this rate since the *Preliminary Results.* Therefore, no additional

Continued

Company	Subsidy rate (percent)
Ozdemir Boru Profil San. Ve Tic. Ltd. Sti.	0.39 (*de minimis*).

Assessment Rates

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review, pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b).[8] Because we calculated a *de minimis* countervailable subsidy rate for Ozdemir in the final results of this review, we intend to instruct CBP to liquidate the appropriate entries without regard to countervailing duties in accordance with 19 CFR 351.212(b)(2) and 19 CFR 351.106(c)(1).

With respect to the companies for which this administrative review is rescinded (*i.e.,* Agir Haddecilik A.S., Cag Celik Demir ve Celik Endustri A.S., Cinar Boru Profil San Ve Tic. A.S., Mescier Dis Ticaret Ltd. Sti., MTS Lojistik ve Tasimacilik Hizmetleri TIC A.C. Istanbul, Noksel Celik Boru Sanayi A, SEBA Dis Ticaret AS., and Tosyali Toyo Celik A.S.), countervailing duties shall be assessed at rates equal to the cash deposit rate required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2018, through December 31, 2018, in accordance with 19 CFR 351.212(c)(1)(i).

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirement

Pursuant to section 751(a)(1) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties at the appropriate rates. For shipments of subject merchandise by Ozdemir entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results, the cash deposit rate will be zero. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This notice of final results and partial rescission of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(d)(4).

Dated: April 8, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–07631 Filed 4–13–21; 8:45 am]

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disclosure of calculations is necessary for these final results under 19 CFR 351.224(b).

[8] *See* section 751(a)(2)(C) of the Act; *see also* 19 CFR 351.212(b).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board; Meeting

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda for two meetings of the Science Advisory Board (SAB). The members will discuss issues outlined in the section on Matters to be considered.

DATES: There are two meetings: The first meeting is scheduled for April 30, 2021 from 4:00 p.m. to 5:00 p.m. Eastern Daylight Time (EDT). The second meeting is scheduled for July 20, 2021, from 1:00 p.m. to 5:00 p.m. Eastern Daylight Time (EDT) and July 22, 2021, from 1:00 p.m. to 5:00 p.m. Eastern Daylight Time (EDT). These times and the agenda topics described below are subject to change. For the latest agenda please refer to the SAB website: *http://sab.noaa.gov/SABMeetings.aspx.*

ADDRESSES: These are virtual meetings. The webinar registration links for the April 30, 2021 and July 20 and July 22, 2021 meetings may be found on the website at *http://sab.noaa.gov/SABMeetings.aspx.*

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, SSMC3, Room 11230, 1315 East-West Hwy., Silver Spring, MD 20910; Phone Number: 301–734–1156; Email: *Cynthia.Decker@noaa.gov;* or visit the SAB website at *http://sab.noaa.gov/SABMeetings.aspx.*

SUPPLEMENTARY INFORMATION: The NOAA Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Status: The April 30, 2021 meeting will be open to public participation with a 5-minute public comment period at 4:55 p.m. EDT. The July 20 and 22, 2021 meeting will be open to public participation with a 15-minute public comment period at 4:45 p.m. EDT on July 20. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three minutes. Written comments for the April 30, 2021 meeting should be received by in the SAB Executive Director's Office by April 23, 2021 to provide sufficient time for SAB review. Written comments for the July 20 and 22, 2021 meeting should be received in the SAB Executive Director's Office by July 1, 2021 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after these dates will be distributed to the SAB, but may not be reviewed prior to the meeting date.

Special Accommodations: This meeting is physically accessible to people with disabilities. Requests for special accommodations may be directed to the Executive Director no later than 12 p.m. on April 23, 2021 for the April 30, 2021 meeting and by July

1, 2021 for the July 20 and 22, 2021 meeting.

Matters to be Considered: The meeting on April 30, 2021 will consider the Environmental Information Services Working Group's Statement on the National Weather Service Data Throttling Concerns. The meeting on July 20 and 22, 2021 will include (1) NOAA updates; (2) Update from the Tsunami Science and Technology Advisory Panel; (3) Review of the Cooperative Institute for Great Lakes Research Review Report; (4) SAB Priorities for Weather Research Study update; (5) NOAA Response to the SAB review of the NOAA Precipitation Prediction Grand Challenge Plan; and (6) Environmental Information Services Working Group's report to Congress. The full agendas will be published on the SAB website. Meeting materials, including work products, will also be available on the SAB website: *http://sab.noaa.gov/SABMeetings.aspx.*

Dated: April 8, 2021.

David Holst,

Director Chief Financial Officer/CAO, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2021–07645 Filed 4–13–21; 8:45 am]

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CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, April 14, 2021; 11:00 a.m.–12:00 a.m.

PLACE: Due to the COVID–19 Pandemic, the meeting will be held remotely.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED: Decisional Matter: Proposed Fiscal Year (FY) 2021 Spending Plan of the American Rescue Plan Act (ARPA) Funds.

All attendees should preregister for the Webinar. To pre-register for the Webinar, please visit: *https://attendee.gotowebinar.com/register/5606127629749658381.*

Dated: April 9, 2021.

Alberta E. Mills,

Commission Secretary.

[FR Doc. 2021–07689 Filed 4–12–21; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Annual Updates to the Income-Contingent Repayment (ICR) Plan Formula for 2021—William D. Ford Federal Direct Loan Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the annual updates to the ICR plan formula for 2021 to give notice to borrowers and the public regarding how monthly ICR payment amounts will be calculated for the 2021–2022 year under the William D. Ford Federal Direct Loan (Direct Loan) Program, Assistance Listing Number 84.063.

DATES: The adjustments to the income percentage factors for the ICR plan formula contained in this notice are applicable from July 1, 2021, to June 30, 2022, for any borrower who enters the ICR plan or has his or her monthly payment amount recalculated under the ICR plan during that period.

FOR FURTHER INFORMATION CONTACT: Travis Sturlaugson, U.S. Department of Education, 830 First Street NE, Room 113H3, Washington, DC 20202. Telephone: (202) 377–4174. Email: *travis.sturlaugson@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Under the Direct Loan Program, borrowers may choose to repay their non-defaulted loans (Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans made to graduate or professional students, and Direct Consolidation Loans) under the ICR plan. The ICR plan bases the borrower's repayment amount on the borrower's Adjusted Gross Income (AGI), family size, loan amount, and the interest rate applicable to each of the borrower's loans.

ICR is one of several income-driven repayment plans. Other income-driven repayment plans include the Income-Based Repayment (IBR) plan, the Pay As You Earn Repayment (PAYE) plan, and the Revised Pay As You Earn Repayment (REPAYE) plan. The IBR, PAYE, and REPAYE plans provide lower payment amounts than the ICR plan for most borrowers.

A Direct Loan borrower who repays under the ICR plan pays the lesser of: (1) The monthly amount that would be required over a 12-year repayment period with fixed payments, multiplied by an income percentage factor; or (2) 20 percent of discretionary income.

Each year, to reflect changes in inflation, we adjust the income percentage factor used to calculate a borrower's ICR payment, as required by 34 CFR 685.209(b)(1)(ii)(A). We use the adjusted income percentage factors to calculate a borrower's monthly ICR payment amount when the borrower initially applies for the ICR plan or when the borrower submits his or her annual income documentation, as required under the ICR plan. This notice contains the adjusted income percentage factors for 2021, examples of how the monthly payment amount in ICR is calculated, and charts showing sample repayment amounts based on the adjusted ICR plan formula. This information is included in the following three attachments:

- *Attachment 1—Income Percentage Factors for 2021*
- *Attachment 2—Examples of the Calculations of Monthly Repayment Amounts*
- *Attachment 3—Charts Showing Sample Repayment Amounts for Single and Married Borrowers*

In Attachment 1, to reflect changes in inflation, we updated the income percentage factors that were published in the **Federal Register** on June 02, 2020 (85 FR 33639). Specifically, we have revised the table of income percentage factors by changing the dollar amounts of the incomes shown by a percentage equal to the estimated percentage change between the not-seasonally-adjusted Consumer Price Index for all urban consumers for December 2020 and December 2021.

The income percentage factors reflected in Attachment 1 may cause a borrower's payments to be lower than they were in prior years, even if the borrower's income is the same as in the prior year. The revised repayment amount more accurately reflects the impact of inflation on the borrower's current ability to repay.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site, you can

view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1087 *et seq.*

Robin Minor,

Acting Chief Operating Officer, Federal Student Aid.

Attachment 1—Income Percentage Factors for 2021

INCOME PERCENTAGE FACTORS FOR 2021

Single		Married/head of household	
AGI	% Factor	AGI	% Factor
$12,596	55.00	$12,596	50.52
$17,332	57.79	$19,875	56.68
$22,302	60.57	$23,684	59.56
$27,385	66.23	$30,964	67.79
$32,238	71.89	$38,359	75.22
$38,359	80.33	$48,180	87.61
$48,180	88.77	$60,425	100.00
$60,426	100.00	$72,676	100.00
$72,676	100.00	$91,051	109.40
$87,347	111.80	$121,666	125.00
$111,844	123.50	$164,531	140.60
$158,410	141.20	$230,104	150.00
$181,631	150.00	$376,006	200.00
$323,516	200.00		

Attachment 2—Examples of the Calculations of Monthly Repayment Amounts

General notes about the examples in this attachment:

- We have a calculator that borrowers can use to estimate what their payment amounts would be under the ICR plan. The calculator is called the ''Loan Simulator'' and is available at *studentaid.gov/loan-simulator.* Based on information entered into the calculator by the borrower (for example, income, family size, and tax filing status), this calculator provides a detailed, individualized assessment of a borrower's loans and repayment plan options, including the ICR plan.
- The interest rates used in the examples are for illustration only. The actual interest rates on an individual borrower's Direct Loans depend on the loan type and when the postsecondary institution first disbursed the Direct Loan to the borrower.
- The Poverty Guideline amounts used in the examples are from the 2021 U.S. Department of Health and Human Services (HHS) Poverty Guidelines for the 48 contiguous States and the District of Columbia. Different Poverty Guidelines apply to residents of Alaska and Hawaii. The Poverty Guidelines for 2021 were published in the **Federal Register** on February 1, 2021 (86 FR 7732).
- All of the examples use an income percentage factor corresponding to an adjusted gross income (AGI) in the table in Attachment 1. If an AGI is not listed in the income percentage factors table in Attachment 1, the applicable income percentage can be calculated by following the instructions under the ''Interpolation'' heading later in this attachment.
- Married borrowers may repay their Direct Loans jointly under the ICR plan. If a married couple elects this option, we add the outstanding balance on the Direct Loans of each borrower and we add together both borrowers' AGIs to determine a joint ICR payment amount. We then prorate the joint payment amount for each borrower based on the proportion of that borrower's debt to the total outstanding balance. We bill each borrower separately.
- For example, if a married couple, John and Briana, has a total outstanding Direct Loan debt of $60,000, of which $40,000 belongs to John and $20,000 to Briana, we would apportion 67 percent of the monthly ICR payment to John and the remaining 33 percent to Briana. To take advantage of a joint ICR payment, married couples need not file taxes jointly; they may file separately and subsequently provide the other spouse's tax information to the borrower's Federal loan servicer.

Calculating the monthly payment amount using a standard amortization and a 12-year repayment period.

The formula to amortize a loan with a standard schedule (in which each payment is the same over the course of the repayment period) is as follows:

$$M = P \times <(I \div 12) \div [1 - \{1 + (I \div 12)\} \wedge -N]>$$

In the formula—

- M is the monthly payment amount;
- P is the outstanding principal balance of the loan at the time the loan entered repayment;
- I is the annual interest rate on the loan, expressed as a decimal (for example, for a loan with an interest rate of 6 percent, 0.06); and
- N is the total number of months in the repayment period (for example, for a loan with a 12-year repayment period, 144 months).

For example, assume that Billy has a $10,000 Direct Unsubsidized Loan with an interest rate of 6 percent.

Step 1: To solve for M, first simplify the numerator of the fraction by which we multiply P, the outstanding principal balance. To do this divide I (the interest rate expressed as a decimal) by 12. In this example, Billy's interest rate is 6 percent. As a decimal, 6 percent is 0.06.

- $0.06 \div 12 = 0.005$

Step 2: Next, simplify the denominator of the fraction by which we multiply P. To do this divide I (the interest rate expressed as a decimal) by 12. Then, add one. Next, raise the sum of the two figures to the negative power that corresponds to the length of the repayment period in months. In this example, because we are amortizing a loan to calculate the monthly payment amount under the ICR plan, the applicable figure is 12 years, which is

144 months. Finally, subtract the result from one.

- 0.06 ÷ 12 = 0.005
- 1 + 0.005 = 1.005
- 1.005 ^ −144 = 0.48762628
- 1 − 0.48762628 = 0.51237372

Step 3: Next, resolve the fraction by dividing the result from Step 1 by the result from Step 2.

- 0.005 ÷ 0.51237372 = 0.0097585

Step 4: Finally, solve for M, the monthly payment amount, by multiplying the outstanding principal balance of the loan by the result of Step 3.

- $10,000 × 0.0097585 = $97.59

The remainder of the examples in this attachment will only show the results of the formula. In each of the examples, the Direct Loan amounts represent the outstanding principal balance at the time the loans entered repayment.

Example 1. Kesha is single with no dependents and has $15,000 in Direct Subsidized and Unsubsidized Loans. The interest rate on Kesha's loans is 6 percent, and she has an AGI of $32,238.

Step 1: Determine the total monthly payment amount based on what Kesha would pay over 12 years using standard amortization. To do this, use the formula that precedes Example 1. In this example, the monthly payment amount would be $146.38.

Step 2: Multiply the result of Step 1 by the income percentage factor shown in the income percentage factors table (see Attachment 1 to this notice) that corresponds to Kesha's AGI. In this example, an AGI of $32,238 corresponds to an income percentage factor of 71.89 percent.

- 0.7189 × $146.38 = $105.23

Step 3: Now, determine the monthly payment amount equal to 20 percent of Kesha's discretionary income (discretionary income is AGI minus the HHS Poverty Guideline amount for a borrower's family size and State of residence). To do this, subtract the HHS Poverty Guideline amount for a family of one from Kesha's AGI, multiply the result by 20 percent, and then divide by 12:

- $32,238 − $12,880 = $19,358
- $19,358 × 0.20 = $3,871.60
- $3,871.60 ÷ 12 = $322.63

Step 4: Compare the amount from Step 2 with the amount from Step 3. In this example, Kesha would pay the amount calculated under Step 2 ($105.23), since this is the lesser of the two payment amounts.

Note: Kesha would have a lower payment under other income-driven repayment plans. Specifically, Kesha's payment would be $107.65 under the PAYE and REPAYE plans. However, Kesha's payment would be $161.48 under the IBR plan, which is higher than the payment she would have under the ICR plan.

Example 2. Paul is married to Jesse and they have no dependents. They file their Federal income tax return jointly. Paul has a Direct Loan balance of $10,000, and Jesse has a Direct Loan balance of $15,000. Each of their Direct Loans has an interest rate of 6 percent.

Paul and Jesse have a combined AGI of $91,051 and are repaying their loans jointly under the ICR plan (for general information regarding joint ICR payments for married couples, see the fifth and sixth bullets under the heading ''General notes about the examples in this attachment'').

Step 1: Add Paul's and Jesse's Direct Loan balances to determine their combined aggregate loan balance:

- $10,000 + $15,000 = $25,000

Step 2: Determine the combined monthly payment amount for Paul and Jesse based on what both borrowers would pay over 12 years using standard amortization. To do this, use the formula that precedes Example 1. In this example, their combined monthly payment amount would be $243.96.

Step 3: Multiply the result of Step 2 by the income percentage factor shown in the income percentage factors table (see Attachment 1 to this notice) that corresponds to Paul and Jesse's combined AGI. In this example, the combined AGI of $91,051 corresponds to an income percentage factor of 109.40 percent.

- 1.094 × $243.96 = $266.90

Step 4: Now, determine the monthly payment amount equal to 20 percent of Paul and Jesse's combined discretionary income (discretionary income is AGI minus the HHS Poverty Guideline amount for a borrower's family size and State of residence). To do this, subtract the Poverty Guideline amount for a family of two from the combined AGI, multiply the result by 20 percent, and then divide by 12:

- $91,051 − $17,420 = $73,631
- $73,631 × 0.20 = $14,726.20
- $14,726.20 ÷ 12 = $1,227.18

Step 5: Compare the amount from Step 3 with the amount from Step 4. Paul and Jesse would jointly pay the amount calculated under Step 3 ($266.90), since this is the lesser of the two amounts.

Note: For Paul and Jesse, the ICR plan provides the lowest monthly payment of any income-driven repayment plan available. Paul and Jesse would not be eligible for the IBR or PAYE plans, and they would have a combined monthly payment under the REPAYE plan of $541.01.

Step 6: Because Paul and Jesse are jointly repaying their Direct Loans under the ICR plan, the monthly payment amount calculated under Step 5 applies to Paul's and Jesse's combined loans. To determine the amount for which each borrower will be responsible, prorate the amount calculated under Step 4 by each spouse's share of the combined Direct Loan debt. Paul has a Direct Loan debt of $10,000 and Jesse has a Direct Loan debt of $15,000. For Paul, the monthly payment amount will be:

- $10,000 ÷ ($10,000 + $15,000) = 40 percent
- 0.40 × $266.90 = $106.76

For Jesse, the monthly payment amount will be:

- $15,000 ÷ ($10,000 + $15,000) = 60 percent
- 0.60 × $266.90 = $160.14

Example 3. Santiago is single with no dependents and has a combined balance of $60,000 in Direct Subsidized and Unsubsidized Loans. Each of Santiago's loans has an interest rate of 6 percent, and Santiago's AGI is $38,359.

Step 1: Determine the total monthly payment amount based on what Santiago would pay over 12 years using standard amortization. To do this, use the formula that precedes Example 1. In this example, the monthly payment amount would be $585.51.

Step 2: Multiply the result of Step 1 by the income percentage factor shown in the income percentage factors table (see Attachment 1 to this notice) that corresponds to Santiago's AGI. In this example, an AGI of $38,359 corresponds to an income percentage factor of 80.33 percent.

- 0.8033 × $585.51 = $470.34

Step 3: Now, determine the monthly payment amount equal to 20 percent of Santiago's discretionary income (discretionary income is AGI minus the HHS Poverty Guideline amount for a borrower's family size and State of residence). To do this, subtract the HHS Poverty Guideline amount for a family of one from Santiago's AGI, multiply the result by 20 percent, and then divide by 12:

- $38,359 − $12,880 = $25,479
- $25,479 × 0.20 = $5,095.80
- $5,095.80 ÷ 12 = $424.65

Step 4: Compare the amount from Step 2 with the amount from Step 3. In this example, Santiago would pay the amount calculated under Step 3 ($424.65), since this is the lesser of the two amounts.

Note: Santiago would have a lower payment under each of the other income-driven plans. Specifically, Santiago's payment would be $158.66 under the PAYE and REPAYE plans and $237.99 under the IBR plan.

Interpolation. If an AGI is not included on the income percentage factor table, calculate the income percentage factor through linear interpolation. For example, assume that Jocelyn is single with an AGI of $50,000.

Step 1: Find the closest AGI listed that is less than Jocelyn's AGI of $50,000 ($48,180) and the closest AGI listed that is greater than Jocelyn's AGI of $50,000 ($60,426).

Step 2: Subtract the lower amount from the higher amount (for this discussion we will call the result the ''income interval''):

- $60,426 − $48,180 = $12,246

Step 3: Determine the difference between the two income percentage factors that correspond to the AGIs used in Step 2 (for this discussion, we will call the result the ''income percentage factor interval''):

- 100.00 percent − 88.77 percent = 11.23 percent

Step 4: Subtract from Jocelyn's AGI the closest AGI shown on the chart that is less than Jocelyn's AGI of $50,000:

- $50,000 − $48,180 = $1,820

Step 5: Divide the result of Step 4 by the income interval determined in Step 2:

- $1,820 ÷ $12,246 = 14.86 percent

Step 6: Multiply the result of Step 5 by the income percentage factor interval that was calculated in Step 3:

- 11.23 percent × 14.86 percent = 1.67 percent

Step 7: Add the result of Step 6 to the lower of the two income percentage factors used in Step 3 to calculate the income percentage factor interval for an AGI of $50,000:

- 1.67 percent + 88.77 percent = 90.44 percent (rounded to the nearest hundredth)

The result is the income percentage factor that we will use to calculate Jocelyn's monthly repayment amount under the ICR plan.

Attachment 3—Charts Showing Sample Income-Driven Repayment Amounts for Single and Married Borrowers

Below are two charts that provide first-year payment amount estimates for a variety of loan debt sizes and AGIs under each of the income-driven repayment plans and the 10-Year Standard Repayment Plan. The first chart is for single borrowers who have a family size of one. The second chart is for a borrower who is married or a head of household and who has a family size of three. The calculations in Attachment 3 assume that the loan debt has an interest rate of 6 percent. For married borrowers, the calculations assume that the borrower files a joint Federal income tax return and that the borrower's spouse does not have Federal student loans. A field with a ''-'' character indicates that the borrower in the example would not be eligible to enter the applicable income-driven repayment plan based on the borrower's AGI, loan debt, and family size.

SAMPLE FIRST-YEAR MONTHLY REPAYMENT AMOUNTS FOR A SINGLE BORROWER

Family Size = 1

	AGI	Plan	$20,000	$40,000	$60,000	$80,000	$100,000
	$20,000	ICR	116	160	195	207	230
		IBR	9	—	—	—	—
		PAYE	6	172	—	—	—
		REPAYE	6	172	339	506	672
		10-Year Standard	222	222	222	222	222
	$40,000	ICR	119	319	390	413	460
		IBR	9	259	—	—	—
		PAYE	6	172	339	—	—
		REPAYE	6	172	339	506	672
		10-Year Standard	444	444	444	444	444
Initial Debt ...	$60,000	ICR	119	452	586	620	690
		IBR	9	259	509	—	—
		PAYE	6	172	339	506	—
		REPAYE	6	172	339	506	672
		10-Year Standard	666	666	666	666	666
	$80,000	ICR	119	452	781	827	920
		IBR	9	259	509	759	—
		PAYE	6	172	339	506	672
		REPAYE	6	172	339	506	672
		10-Year Standard	888	888	888	888	888
	$100,000	ICR	119	452	785	1,033	1,150
		IBR	9	259	509	759	1,009
		PAYE	6	172	339	506	672
		REPAYE	6	172	339	506	672
		10-Year Standard	1,110	1,110	1,110	1,110	1,110

SAMPLE FIRST-YEAR MONTHLY REPAYMENT AMOUNTS FOR A MARRIED OR HEAD-OF-HOUSEHOLD BORROWER

Family Size = 3

	AGI	Plan	$20,000	$40,000	$60,000	$80,000	$100,000
	$20,000	ICR	0	151	195	202	222
		IBR	0	88	—	—	—
		PAYE	0	59	—	—	—
		REPAYE	0	59	226	392	559
		10-Year Standard	222	222	222	222	222

SAMPLE FIRST-YEAR MONTHLY REPAYMENT AMOUNTS FOR A MARRIED OR HEAD-OF-HOUSEHOLD BORROWER—Continued

Family Size = 3							
	AGI	Plan	$20,000	$40,000	$60,000	$80,000	$100,000
	$40,000	ICR	0	301	390	405	445
		IBR	0	88	338	—	—
		PAYE	0	62	226	392	—
		REPAYE	0	62	226	392	559
		10-Year Standard	444	444	444	444	444
Initial Debt	$60,000	ICR	0	301	586	607	667
		IBR	0	88	338	588	—
		PAYE	0	59	226	392	559
		REPAYE	0	59	226	392	559
		10-Year Standard	666	666	666	666	666
	$80,000	ICR	0	301	634	810	890
		IBR	0	88	338	588	838
		PAYE	0	59	226	392	559
		REPAYE	0	59	226	392	559
		10-Year Standard	888	888	888	888	888
	$100,000	ICR	0	301	634	967	1,112
		IBR	0	88	338	588	38
		PAYE	0	59	226	392	559
		REPAYE	0	59	226	392	559
		10-Year Standard	1,110	1,110	1,110	1,110	1,110

[FR Doc. 2021–07605 Filed 4–13–21; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ21–10–000]

Oncor Electric Delivery Company LLC; Notice of Filing

Take notice that on April 6, 2021, Oncor Electric Delivery Company LLC submitted its tariff filing: Oncor TFO Tariff Rate Changes Effective March 26, 2021 to be effective 3/26/2021.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on April 27, 2021.

Dated: April 7, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07617 Filed 4–13–21; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–1638–000]

Daylight I, LLC, Edwards Solar Line I, LLC, Sanborn Solar Line I, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Daylight I, LLC, Edwards Solar Line I, LLC, and Sanborn Solar Line I, LLC, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 28, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 8, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07637 Filed 4–13–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2449–002.

Applicants: Boulder Solar II, LLC.

Description: Compliance filing: Boulder Solar Compliance Filing to be effective 9/1/2016.

Filed Date: 4/8/21.

Accession Number: 20210408–5220.

Comments Due: 5 p.m. ET 4/29/21.

Docket Numbers: ER21–628–002.

Applicants: Harry Allen Solar Energy LLC.

Description: Compliance filing: Harry Allen Solar Energy to be effective 3/1/2021.

Filed Date: 4/8/21.

Accession Number: 20210408–5207.

Comments Due: 5 p.m. ET 4/29/21.

Docket Numbers: ER21–1636–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2021–04–07_Attachments FF–3 Clean-Up to be effective 6/7/2021.

Filed Date: 4/7/21.

Accession Number: 20210407–5308.

Comments Due: 5 p.m. ET 4/28/21.

Docket Numbers: ER21–1637–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: ISO–NE & NEPOOL; Joint Filing Regarding Offer Review Trigger Prices to be effective 6/8/2021.

Filed Date: 4/7/21.

Accession Number: 20210407–5305.

Comments Due: 5 p.m. ET 4/28/21.

Docket Numbers: ER21–1638–000.

Applicants: Daylight I, LLC, Edwards Solar Line I, LLC, Sanborn Solar Line I, LLC.

Description: Request for Waivers and Blanket Authorization of Daylight I, LLC, et al.

Filed Date: 4/2/21.

Accession Number: 20210402–5306.

Comments Due: 5 p.m. ET 4/23/21.

Docket Numbers: ER21–1639–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 5813; Queue No. AD2–072 to be effective 9/29/2020.

Filed Date: 4/8/21.

Accession Number: 20210408–5038.

Comments Due: 5 p.m. ET 4/29/21.

Docket Numbers: ER21–1640–000.

Applicants: Pacific Gas and Electric Company.

Description: Notice of Termination of Service Agreement Nos. 52 and 53 for Berry Petroleum—Tannehill and Berry Petroleum University of Pacific Gas and Electric Company.

Filed Date: 4/7/21.

Accession Number: 20210407–5336.

Comments Due: 5 p.m. ET 4/28/21.

Docket Numbers: ER21–1641–000.

Applicants: New York Transco, LLC, New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 205 CEII EPCA among Transco, Castleton and NYISO SA No. 2615 to be effective 3/1/2021.

Filed Date: 4/8/21.

Accession Number: 20210408–5138.

Comments Due: 5 p.m. ET 4/29/21.

Docket Numbers: ER21–1642–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: ED&P Letter Agreement Falcon Energy Storage Holdings, LLC—Condor Storage to be effective 4/9/2021.

Filed Date: 4/8/21.

Accession Number: 20210408–5150.

Comments Due: 5 p.m. ET 4/29/21.

Docket Numbers: ER21–1643–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2450R2 KEPCO NITSA NOA Cancellation to be effective 12/1/2020.

Filed Date: 4/8/21.

Accession Number: 20210408–5157.

Comments Due: 5 p.m. ET 4/29/21.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF16–905–000.

Applicants: Ampersand Chasm Falls Hydro LLC.

Description: Refund Report of Ampersand Chasm Falls Hydro LLC.

Filed Date: 4/8/21.

Accession Number: 20210408–5191.

Comments Due: 5 p.m. ET 4/29/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 8, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07635 Filed 4–13–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR21–8–000]

Capline Pipeline Company LLC; Notice of Petition for Declaratory Order

Take notice that on March 31, 2021, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2019), Capline Pipeline Company LLC (''Capline'') hereby requests that the Commission issue a declaratory order approving various requested rulings related to a proposed reversal of Capline's existing pipeline system (''Capline Reversal''). The Capline Reversal, once completed, will allow shippers to transport various grades of crude oil from an origin point in Patoka, Illinois to a destination point in St. James, Louisiana, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on April 30, 2021.

Dated: April 8, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–07627 Filed 4–13–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15110–000]

Littoral Power Systems, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 17, 2021, the Littoral Power Systems, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the proposed Kootznahoo Inlet Tidal Power Project No. 15110–000, to be located on Kootznahoo Inlet and adjacent lands of the City of Angoon, in Hoonah-Angoon Borough, Alaska. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A partially buoyant submersed tidal current energy converter with a 3-meter-diameter rotor tethered to an anchor post driven into the seabed in Kootznahoo inlet generating up to 300 kW; (2) a dual electric cable, each with a capacity of 13.2 kV, connecting to an on-land storage system; and (3) an on-land energy storage system in the City of Angoon consisting of individual lithium-ion battery cells. The Kootznahoo Inlet Tidal Power Project does not intend to directly connect to the Angoon electricity system. The capacity of the on-land storage system is 250kW and estimated average annual generation is not yet determined.

Applicant Contact: Stephen Barrett, 1596 Main Street, Concord, Massachusetts, 01742; phone: (339) 234–2696; email: *steve@barrettenergygroup.com.*

FERC Contact: Kristen Sinclair; phone: (202) 502–6587; email: *kristen.sinclair@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–15110) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 7, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07618 Filed 4–13–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP21–718–000.

Applicants: Rover Pipeline LLC.

Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 4–5–21 to be effective 4/1/2021.

Filed Date: 4/5/21.

Accession Number: 20210405–5577.

Comments Due: 5 p.m. ET 4/19/21.

Docket Numbers: RP21–719–000.

Applicants: Florida Southeast Connection, LLC.

Description: § 4(d) Rate Filing: Florida Southeast Connection Housekeeping Filing to be effective 4/7/2021.

Filed Date: 4/6/21.

Accession Number: 20210406–5662.

Comments Due: 5 p.m. ET 4/19/21.

Docket Numbers: RP21–720–000.

Applicants: WBI Energy Transmission, Inc.

Description: § 4(d) Rate Filing: 2021 New GMS System—Uncommitted Capacity to be effective 5/7/2021.

Filed Date: 4/6/21.

Accession Number: 20210406–6056.

Comments Due: 5 p.m. ET 4/19/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 7, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07616 Filed 4–13–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP21–721–000.

Applicants: Boardwalk Storage Company, LLC.

Description: § 4(d) Rate Filing: Filing to Correct Metadata to be effective 9/25/2020.

Filed Date: 4/7/21.

Accession Number: 20210407–5104.

Comments Due: 5 p.m. ET 4/19/21.

Docket Numbers: RP21–723–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20210407 Negotiated Rate to be effective 4/8/2021.

Filed Date: 4/7/21.

Accession Number: 20210407–5249.

Comments Due: 5 p.m. ET 4/19/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 8, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07636 Filed 4–13–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC21–74–000.

Applicants: Arthur Kill Power LLC, Connecticut Jet Power LLC, Devon Power LLC, Long Beach Generation LLC, Middletown Power LLC, Montville Power LLC, Oswego Harbor Power LLC, Sunrise Power Company, LLC, NRG Power Marketing LLC, Generation Bridge Acquisition, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Arthur Kill Power LLC, et al.

Filed Date: 4/6/21.

Accession Number: 20210406–6163.

Comments Due: 5 p.m. ET 6/7/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–1018–001.

Applicants: New York Independent System Operator, Inc.

Description: Tariff Amendment: Deficiency Response—Operating and Supplemental Reserves to be effective 12/31/9998.

Filed Date: 4/7/21.

Accession Number: 20210407–5241.

Comments Due: 5 p.m. ET 4/28/21.

Docket Numbers: ER21–1630–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA, SA No. 4846; Queue No. AC2–144 to be effective 3/17/2021.

Filed Date: 4/7/21.

Accession Number: 20210407–5126.

Comments Due: 5 p.m. ET 4/28/21.

Docket Numbers: ER21–1631–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA, SA No. 4842; Queue No. AC2–145 to be effective 3/17/2021.

Filed Date: 4/7/21.

Accession Number: 20210407–5127.

Comments Due: 5 p.m. ET 4/28/21.

Docket Numbers: ER21–1632–000.

Applicants: EcoPlus Power, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Tariff Application to be effective 4/8/2021.

Filed Date: 4/7/21.

Accession Number: 20210407–5140.

Comments Due: 5 p.m. ET 4/28/21.

Docket Numbers: ER21–1633–000.

Applicants: Elk Hill Solar 2, LLC.

Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 4/8/2021.

Filed Date: 4/7/21.

Accession Number: 20210407–5143.

Comments Due: 5 p.m. ET 4/28/21.

Docket Numbers: ER21–1634–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: ED&P Letter Agreement, VESI 12 LLC—Bottleneck Energy Storage, SA No. 1133 to be effective 4/8/2021.

Filed Date: 4/7/21.

Accession Number: 20210407–5179.

Comments Due: 5 p.m. ET 4/28/21.

Docket Numbers: ER21–1635–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Black Start Revisions to Tariff, Schedule 6A to be effective 6/6/2021.

Filed Date: 4/7/21.

Accession Number: 20210407–5217.

Comments Due: 5 p.m. ET 4/28/21.

The filings are accessible in the Commission's eLibrary system (*https://*

elibrary.ferc.gov/idmws/search/fercgensearch.asp) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 7, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07615 Filed 4–13–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD21–5–000]

Truckee Meadows Water Authority; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On March 29, 2021, Truckee Meadows Water Authority filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA). The proposed Highland Canal Hydroelectric Project would have an installed capacity of 1,000 kilowatts (kW), and would be located on the applicant's existing municipal pipeline system in Washoe County, Nevada.

Applicant Contact: Mr. Michael A. Swiger, Van Ness Feldman, LLP, 1050 Thomas Jefferson Street NW, Washington, DC 20007, Phone No. (202) 298–1891, Email: *mas@vnf.com.*

FERC Contact: Christopher Chaney, Phone No. (202) 502–6778, Email: *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) Two 500-kW vertical Francis turbines and synchronous generators located within the rebuilt Orr Ditch Pumping Facility; and (2) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 45 megawatt-hours.

The proposed project would discharge water to the Truckee River, a natural body of water. Because only a portion of the discharge would be withdrawn downstream by part of the same water supply system, the applicant requests waiver of the discharge requirement under 18 CFR 4.30(b)(30)(iv).

A qualifying conduit hydropower facility is one that is determined or deemed to meet all the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	*Description*	*Satisfies (Y/N)*
FPA 30(a)(3)(A)	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity..	Y
FPA 30(a)(3)(C)(i)	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit..	Y
FPA 30(a)(3)(C)(ii)	The facility has an installed capacity that does not exceed 40 megawatts.	Y
FPA 30(a)(3)(C)(iii)	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA..	Y

Preliminary Determination: The proposed Highland Canal Hydroelectric Project will not alter the primary purpose of the conduit system, which is used to distribute water for municipal consumption. Therefore, based upon the above criteria, if the requested discharge requirement waiver is granted, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is *30 days* from the issuance date of this notice.

Deadline for filing motions to intervene is *30 days* from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

[1] 18 CFR 385.2001–2005 (2020).

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may send a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue,

Rockville, MD 20852. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Locations of Notice of Intent: The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (*i.e.,* CD21–5) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Copies of the notice of intent can be obtained directly from the applicant. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: April 8, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–07634 Filed 4–13–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C.552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: April 15, 2021, 10:00 a.m.

PLACE: Open to the public via audio Webcast only. Join FERC online to listen live at *http://ferc.capitolconnection.org/*

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission.It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's website at *http://ferc.capitolconnection.org/* using the eLibrary link.

1077TH MEETING—OPEN MEETING

[April 15, 2021, 10:00 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD21–1–000	Agency Administrative Matters.
A–2	AD21–2–000	Customer Matters, Reliability, Security and Market Operations.
	Electric	
E–1	RM20–10–000	Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act.
E–2	AD20–14–000	Carbon Pricing in Organized Wholesale Electricity Markets.
E–3	RM19–20–000	WECC Regional Reliability Standard BAL–002–WECC–3 (Contingency Reserve).
E–4	ER20–2436–000, ER20–2437–000, ER20–2437–001.	Midcontinent Independent System Operator, Inc.
E–5	ER20–2423–000, ER20–2424–000, ER20–2424–001, ER20–2427–000, ER20–2427–001.	Midcontinent Independent System Operator, Inc.
E–6	ER20–2411–000, ER20–2412–000, ER20–2412–001.	Midcontinent Independent System Operator, Inc.
E–7	ER20–2438–000, ER20–2439–000, ER20–2439–001.	Midcontinent Independent System Operator, Inc.
E–8	EL17–89–000	American Electric Power Service Corporation v. Midcontinent Independent System Operator, Inc. and Southwest Power Pool, Inc.
	EL19–60–000	City of Prescott, Arkansas v. Southwestern Electric Power Company and Midcontinent Independent System Operator, Inc.
E–9	EL20–65–000	New York Independent System Operator, Inc.
E–10	IN21–6–000	PacifiCorp.
E–11	ER20–1708–001	California State University-Channel Islands Site Authority.
E–12	ER20–1150–001	PJM Interconnection, L.L.C. and The Dayton Power & Light Company.
E–13	ER20–1738–001	City of Anaheim, California.
E–14	ER20–227–001	PJM Interconnection, L.L.C. and Jersey Central Power & Light Company.
E–15	ER19–2585–001	Florida Power & Light Company.
E–16	EL20–49–001	Shell Energy North America (US), L.P.
E–17	ER16–2320–006	Pacific Gas and Electric Company.
E–18	EL20–47–000	Deseret Generation and Transmission Co–operative, Inc.
E–19	EL10–65–008, EL10–65–009	Louisiana Public Service Commission v. Entergy Corporation, Entergy Services Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, L.L.C., and Entergy Texas, Inc.
E–20	Omitted	
E–21	ER21–395–000	California Independent System Operator Corporation.
E–22	ER21–70–000	Wilderness Line Holdings, LLC.

1077TH MEETING—OPEN MEETING—Continued

[April 15, 2021, 10:00 a.m.]

Item No.	Docket No.	Company
E–23	EL20–67–000	Vistra Corp., Dynegy Marketing and Trade, LLC, NextEra Energy Resources, LLC, NRG Power Marketing LLC, LS Power Associates, L.P., FirstLight Power Inc., Cogentrix Energy Power Management, LLC, v. Constellation Mystic Power, LLC, Exelon Generation Company, LLC, and Exelon Corporation.
E–24	EL20–36–001	Bonneville Power Administration v. Avista Corporation.
E–25	EL21–18–000	Kansas Electric Power Cooperative, Inc. v. Evergy Kansas Central, Inc.
E–26	EL20–71–000	Duke Energy Indiana, LLC v. AEP Indiana Michigan Transmission Company, Inc.
E–27	EL21–15–000	Citizens S–Line Transmission LLC.
E–28	ER21–424–000	Michigan Electric Transmission Company, LLC.
	Gas	
G–1	RM20–14–001	Five–Year Review of the Oil Pipeline Index.
G–2	RP19–1634–002	Kinetica Deepwater Express, LLC.
	RP20–788–000, RP13–1116–000, RP19–54–000.	Kinetica Energy Express, LLC.
	Hydro	
H–1	P–10809–052	Boyce Hydro Power, LLC.
	P–10810–058, P–2785–104	
	Certificates	
C–1	CP16–480–000	Annova LNG Common Infrastructure, LLC.
C–2	CP20–456–000	Enable Mississippi River Transmission, LLC.
C–3	CP20–470–000	Washington 10 Storage Corporation and South Romeo Gas Storage Company, L.L.C.
C–4	CP20–487–000	Northern Natural Gas Company.

Issued: April 8, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

The public is invited to listen to the meeting live at *http://ferc.capitolconnection.org/.* Anyone with internet access who desires to hear this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its audio webcast. The Capitol Connection provides technical support for this free audio webcast. It will also offer access to this event via phone bridge for a fee. If you have any questions, visit *http://ferc.capitolconnection.org/* or contact Shirley Al-Jarani at 703–993–3104.

[FR Doc. 2021–07683 Filed 4–12–21; 11:15 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1189; FRS 20916]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before *May 14, 2021.*

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1189.

Title: Signal Boosters, Sections 1.1307(b)(1), 20.3, 20.21(a)(2), 20.21(a)(5), 20.21(e)(2), 20.21(e)(8)(I)(G), 20.21(e)(9)(I)(H), 20.21(f), 20.21(h), 22.9, 24.9, 27.9. 90.203, 90.219(b)(l)(I), 90.219(d)(5), and 90.219(e)(5).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Not for profit institutions and Individuals or household.

Number of Respondents and Responses: 632,534 respondents and 635,214 responses.

Estimated Time per Response: .5 hours–40 hours.

Frequency of Response: Recordkeeping requirement, On occasion reporting requirement and Third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 154(i), 303(g), 303(r) and 332.

Total Annual Burden: 324,465 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: This information collection affects individuals or households; thus, there are impacts under the Privacy Act. However, the government is not directly collecting this information and the R&O directs carriers to protect the information to the extent it is considered Customer Proprietary Network Information (CPNI).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Commission is seeking approval from the Office of Management and Budget (OMB) approval for a three-year time period for this information collection requirements approved under this collection. The following information collection requirements are approved under this collection: Labeling Requirements: Sections 20.21(a)(5), 20.21(f), 90.219(e)(5)—In order to avoid consumer confusion and provide consumers with needed information, the Commission adopted labeling requirements for Consumer and Industrial Signal Boosters. Consumer Signal Boosters must be labeled to identify the device as a ''consumer'' device and make the consumer aware that the device must be registered; may only be operated with the consent of the consumer's wireless provider; may only be operated with approved antennas and cables; and that E911 communications may be affected for calls served by using the device. Industrial Signal Boosters must include a label stating that the device is not a consumer device, is designed for installation by FCC licensees or a qualified installer, and the operator must have a FCC license or consent of a FCC licensee to operate the device. Accordingly, all signal boosters marketed on or after March 1, 2014, must include the advisories (1) in on-line point-of-sale marketing materials; (2) in any print or on-line owner's manual and installation instructions; (3) on the outside packaging of the device; and (4) on a label affixed to the device. Part 90 signal boosters marketed or sold on or after March 1, 2014, must include a label stating that the device is not a consumer device; the operator must have a FCC license or consent of a FCC licensee to operate the device; the operator must register Class B signal boosters; and unauthorized use may result in significant forfeitures.

Section 20.21(f)(1)(iv)(A)(2)—In order to ensure that consumers are properly informed about which devices are suitable for their use and how to comply with our rules, the Commission required that all Consumer Signal Boosters certified for fixed, in-building operation include a label directing consumers that the device may only be operated in a fixed, in-building location. The Verizon Petitioners state that this additional labeling requirement is necessary to inform purchasers of fixed Consumer Signal Boosters that they may not lawfully be installed and operated in a moving vehicle or outdoor location. We recognize that our labeling requirement imposes additional costs on entities that manufacture Consumer Signal Boosters; however, on balance, we find that such costs are outweighed by the benefits of ensuring that consumers purchase appropriate devices. Accordingly, all fixed Consumer Signal Boosters, both Provider-Specific and Wideband, manufactured or imported on or after one year from the effective date of the rule change must include the following advisory (1) in on-line point-of-sale marketing materials, (2) in any print or on-line owner's manual and installation instructions, (3) on the outside packaging of the device, and (4) on a label affixed to the device: ''This device may be operated ONLY in a fixed location for in-building use.''

Section 1.1307(b)(1)—Radiofrequency (RF). This rule requires that a label is affixed to the transmitting antenna that provides adequate notice regarding potential RF safety hazards and references the applicable FCC-adopted limits for RF exposure. Provider Reporting Requirement: In order to facilitate review of wireless providers' behavior regarding Consumer Signal Boosters, the R&O requires that on March 1, 2015, and March 1, 2016, all nationwide wireless providers publicly indicate their status regarding consent for each Consumer Signal Booster that has received FCC certification as listed in a Public Notice to be released by the Wireless Telecommunications Bureau 30 days prior to each reporting date. For each listed Consumer Signal Booster, wireless providers should publicly indicate whether they (1) consent to use of the device; (2) do not consent to use of the device; or (3) are still considering whether or not they will consent to the use of the device.

Registration Requirements: Section 20.21(a)(2)—The rules require signal booster operators to register Consumer Signal Boosters, existing and new, with their serving wireless providers prior to operation. This is a mandatory requirement to continue or begin operation of a Consumer Signal Booster. The registration requirement will aid in interference resolution and facilitate provider control over Consumer Signal Boosters. The information collection contained in Section 20.21(a)(2) affects individuals or households; thus, there are impacts under the Privacy Act. However, the government is not directly collecting this information and the R&O directs carriers to protect the information to the extent it is considered Customer Proprietary Network Information (CPNI).

Section 20.21(h)—By March 1, 2014, all providers who voluntarily consent to

the use of Consumer Signal Boosters on their networks must establish a free registration system for their subscribers. At a minimum, providers must collect (1) the name of the Consumer Signal Booster owner and/or operator, if different individuals; (2) the make, model, and serial number of the device; (3) the location of the device; and (4) the date of initial operation. Otherwise, the Commission permits providers to develop their own registration systems to facilitate provider control and interference resolution, providers should collect only such information that is reasonably related to achieving these dual goals. Wireless providers may determine how to collect such information and how to keep it up-to-date. Section 90.219(d)(5)—This rule requires operators of Part 90 Class B signal boosters to register these devices in a searchable on-line database that will be maintained and operated by the Wireless Telecommunications Bureau via delegated authority from the Commission. The Commission believes this will be a valuable tool to resolve interference should it occur.

Certification Requirements: Sections 20.3, 20.21(e)(2), 20.21(e)(8)(i)(G), 20.21(e)(9)(i)(H), 90.203—These rules, in conjunction with the R&O, require that signal booster manufacturers demonstrate that they meet the new technical specifications using the existing and unchanged equipment authorization application, including submitting a technical document with the application for FCC equipment authorization that shows compliance of all antennas, cables and/or coupling devices with the requirements of § 20.21(e). The R&O further provides that manufacturers must make certain certifications when applying for device certification. Manufacturers must provide an explanation of all measures taken to ensure that the technical safeguards designed to inhibit harmful interference and protect wireless networks cannot be deactivated by the user. The R&O requires that manufacturers of Provider-Specific Consumer Signal Boosters may only be certificated with the consent of the licensee so the manufacturer must certify that it has obtained such consent as part of the equipment certification process. The R&O also requires that if a manufacturer claims that a device will not affect E911 communications, the manufacturer must certify this claim during the equipment certification process. Note: The ''application for equipment'' certification requirements are met under OMB Control Number 3060–0057, FCC Form 731.

Antenna Kitting Documentation Requirement: Sections 20.21(e)(8)(i)(G), 20.21(e)(9)(i)(H)—The rules require that all consumer boosters must be sold with user manuals specifying all antennas and cables that meet the requirements of this section. Part 90 Licensee Consent Documentation Requirement: Section 90.219(b)(1)(i)—This rule requires that non-licensees seeking to operate part 90 signal boosters must obtain the express consent of the licensee(s) of the frequencies for which the device or system is intended to amplify. The rules further require that such consent must be maintained in a recordable format that can be presented to a FCC representative or other relevant licensee investigating interference.

Cross-reference to Other Rule Parts: Sections 22.9, 24.9, and 27.9—Operation of a consumer signal booster under Parts 22, 24, and 27 of the Commission's rules must also comply with section 20.21 of the Commission's rules, including all relevant information collections.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–07657 Filed 4–13–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; System of Records; Correction

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of a modified systems of records; correction.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) published a System of Records Notice (SORN) in the **Federal Register** of July 22, 2019, that modified a System of Records titled ''Financial Institution Investigative and Enforcement Records, FDIC–30–64–0002.'' Subsequent to the publication of the notice, FDIC discovered an error. This notice corrects that error.

DATES: This correction is effective on April 14, 2021.

FOR FURTHER INFORMATION CONTACT: Shannon Dahn, Chief, Privacy Section, (703) 516–1162, *Privacy@fdic.gov,* or Gary Jackson, Counsel, (703) 562–2677, *gjackson@fdic.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of July 22, 2019, in FR Doc 2019–15280, on page 35188, in the first column, after EXEMPTIONS PROMULGATED FOR THE SYSTEM, please correct the following:

Delete in entirety ''None'' and insert ''Portions of the records in this system of records were compiled for law enforcement purposes and are exempt from disclosure under 12 CFR 310.13 and 5 U.S.C. 552a(k)(2). Federal criminal law enforcement investigatory reports maintained as part of this system may be the subject of exemptions imposed by the originating agency pursuant to 5 U.S.C. 552a(j)(2).''

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 5, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–07591 Filed 4–13–21; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201263–003.

Agreement Name: Maersk/MSC/Zim Cooperative Working Agreement.

Parties: Maersk Line A/S; Mediterranean Shipping Company S.A.; and Zim Integrated Shipping Services Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment authorizes the parties to operate an additional service string in the Agreement trade, increase the size of vessels to be deployed on the string, revise the amount of space to be chartered, add a provision on the deployment of extra loaders, and make non-substantive changes to the Agreement.

Proposed Effective Date: 5/22/21.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/14256.

Dated: April 9, 2021.

Rachel E. Dickon,

Secretary.

[FR Doc. 2021–07644 Filed 4–13–21; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than April 29, 2021.

A. Federal Reserve Bank of Kansas City (Porcia Block, Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Marian Olander Tutera Family 2021 Irrevocable Trust, John David Cunningham, as trustee, the Anthony Michael Mendolia Family 2021 Irrevocable Trust, and the John David Cunningham Family 2021 Irrevocable Trust, Joseph C. Tutera, as trustee of both trusts, all of Kansas City, Missouri;* to join the Tutera Family Group, a group acting in concert, to acquire voting shares of Central Bancshares of Kansas City, and thereby indirectly acquire voting shares of Central Bank of Kansas City, both of Kansas City, Missouri.

Board of Governors of the Federal Reserve System, April 8, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–07643 Filed 4–13–21; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 29, 2021.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Jane C. Wilemon, individually, and as trustee of both the Wilemon Family Trust and the Wilemon Survivors Trust, all of Maypearl, Texas;* to become the Jane C. Wilemon Family Control Group, a group acting in concert, to retain voting shares of Maypearl Bancshares, Inc., and thereby indirectly retain voting shares of The Cowboy Bank of Texas, both of Maypearl, Texas.

Board of Governors of the Federal Reserve System, April 8, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–07603 Filed 4–13–21; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0163; Docket No. 2021–0053; Sequence No. 2]

Submission for OMB Review; Small Business Size Rerepresentation

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding small business size rerepresentation.

DATES: Submit comments on or before May 14, 2021.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

Additionally, submit a copy to GSA through *http://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

Instructions: All items submitted must cite OMB Control No. 9000–0163, Small Business Size Rerepresentation. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0163, Small Business Size Rerepresentation.

B. Needs and Uses

This clearance covers the information that contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

52.219–28, Post-Award Small Business Program Rerepresentation. This clause requires contractors who originally represented themselves as a small business for a contract award to rerepresent their size and socioeconomic status at the prime contract level by updating their representations in the Representations and Certifications section of the System for Award Management (SAM). Contractors are also required to notify the contracting officer by email, or otherwise in writing, that the rerepresentations have been made, and provide the date on which they were made.

Small business contractors are required to rerepresent their size and socioeconomic status upon occurrence of any of the following:

- Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include FAR clause 52.219–28 if the novation agreement was executed prior to inclusion of this clause in the contract.
- Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include FAR clause 52.219–28 if the merger or acquisition occurred prior to inclusion of this clause in the contract.
- For long-term contracts—

Within 60 to 120 days prior to the end of the fifth year of the contract; and

Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

- When contracting officers explicitly require it for an order issued under a multiple-award contract.

The collected information is used by the Small Business Administration, Congress, Federal agencies and the general public for various reasons such as determining if agencies are meeting statutory goals, set-aside determinations, and market research.

C. Annual Burden

Respondents: 2,647.

Total Annual Responses: 4,029.

Total Burden Hours: 2,014.5.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 86 FR 8019, on February 3, 2021. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0163, Small Business Size Rerepresentation.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2021–07568 Filed 4–13–21; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0188; Docket No. 2021–0053; Sequence No. 3]

Submission for OMB Review; Combating Trafficking in Persons

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding combating trafficking in persons.

DATES: Submit comments on or before May 14, 2021.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

Additionally, submit a copy to GSA through *http://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

Instructions: All items submitted must cite OMB Control No. 9000–0188, Combating Trafficking in Persons. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0188, Combating Trafficking in Persons.

B. Need and Uses

This clearance covers the information that offerors contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

52.222–50, Combating Trafficking in Persons.

Notification. Paragraph (d) of this clause requires contractors to notify the contracting officer and the agency Inspector General of—

- Any credible information they receive from any source that alleges a contractor employee, subcontractor, or subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of the clause 52.222–50; and
- Any actions taken against a contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

Compliance Plan and Annual Certification. Paragraph (h) of the clause contains an additional requirement for contracts for supplies (other than commercially available off-the-shelf (COTS) items) to be acquired outside the United States and contracts for services to be performed outside the United States, with an estimated value exceeding $550,000, where the contractor is to maintain a compliance plan during the performance of the contract. This compliance plan must include an awareness program, a process for employees to report activity inconsistent with the zero-tolerance policy, a recruitment and wage plan, a housing plan, and procedures to prevent

subcontractors from engaging in trafficking in persons.

- Contractors are required to provide the compliance plan to the contracting officer upon request.
- Contractors are required to submit a certification to the contracting officer annually after receiving an award, asserting that they have the required compliance plan in place and that there have been no abuses, or that appropriate actions have been taken if abuses have been found.
- For those subcontractors required to submit a certification (see next bullet on flow down), contractors shall require that submission prior to award of the subcontract and annually thereafter.

Portions of this clause flows down to all subcontractors. The requirements related to the compliance plan only flow down to subcontracts exceeding $550,000 for supplies (other than COTS items) acquired and services performed outside the United States.

This clause applies to commercial item acquisitions, except the portions related to the compliance plan do not apply to acquisitions of COTS items.

52.222–56, Certification Regarding Trafficking in Persons Compliance Plan.

This provision requires apparently successful offerors to submit a certification, prior to award, that they have implemented a compliance plan and that there have been no abuses, or that appropriate actions have been taken if abuses have been found.

The provision requires this certification for the portion of contracts exceeding $550,000 for supplies (other than COTS items) acquired and services performed outside the United States.

This provision applies to commercial item acquisitions, except acquisitions of COTS items.

FAR 52.222–50, paragraph (d)—Notification. The Government uses this notification of potential violations of trafficking in persons requirements to investigate and take appropriate action if a violation has occurred.

FAR 52.222–50, paragraph (h)—Compliance Plan. The Government uses the compliance plan to ascertain compliance with the Trafficking Victims Protection Act (22 U.S.C. 7104), Executive Order 13627, or any other applicable law or regulation.

FAR 52.222–50, paragraph (h) and FAR 52.222–56—Certification. The Government uses the certification to obtain reasonable assurance that the contractor and its subcontractors are aware of and complying with the requirements of the Executive Order and statute.

C. Annual Burden

Respondents/Recordkeepers: 5,876.
Total Annual Responses: 11,702.
Total Burden Hours: 164,154. (25,722 reporting hours + 138,432 recordkeeping hours)).

D. Public Comment

A 60-day notice was published in the **Federal Register** at 86 FR 8360, on February 5, 2021. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.*

Please cite OMB Control No. 9000–0188, Combating Trafficking in Persons.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2021–07571 Filed 4–13–21; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0998]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by May 14, 2021.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0409. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring—21 CFR part 315

OMB Control Number 0910–0409—Extension

This information collection supports our regulations in part 315 (21 CFR part 315) that require manufacturers of diagnostic radiopharmaceuticals to submit information that demonstrates the safety and effectiveness of: (1) A new diagnostic radiopharmaceutical; or (2) a new indication for use of an approved diagnostic radiopharmaceutical. Information about the safety or effectiveness of a diagnostic radiopharmaceutical enables us to properly evaluate the safety and effectiveness profiles of such radiopharmaceuticals.

The information, which is usually submitted as part of a new drug application (NDA) or biologics license application (BLA) or as a supplement to an approved application typically includes, but is not limited to, nonclinical and clinical data on the pharmacology; toxicology; adverse events; radiation safety assessments; and chemistry, manufacturing, and controls. The content and format of an application for approval of a new drug are set forth in § 314.50 (21 CFR 314.50) and have been approved under OMB control number 0910–0001. This information collection supports part 315, which is currently approved under OMB control number 0910–0409.

In table 1, row 1, we estimate the annual reporting burden for preparing the safety and effectiveness sections of an application. This estimate does not include the time needed to conduct studies and clinical trials or other research from which the reported information is obtained.

Based on past submissions of human drug applications, new indication supplements for diagnostic

radiopharmaceuticals, or both, we estimate that six submissions will be received annually and that 2,000 hours would be spent preparing the portions of the application that would be affected by this information collection. We further estimate the total time needed to prepare complete applications for diagnostic radiopharmaceuticals as approximately 12,000 hours. This information collection does not impose any additional reporting burden for safety and effectiveness information on diagnostic radiopharmaceuticals beyond the estimated burden of 2,000 hours, because safety and effectiveness information is already required in § 314.50 and has been approved under OMB control number 0910–0001. In fact, clarification of our criteria for the evaluation of diagnostic radiopharmaceuticals in this information collection is intended to streamline overall information collection burdens, particularly for diagnostic radiopharmaceuticals that may have well-established, low-risk safety profiles by enabling manufacturers to tailor information submissions and avoid unnecessary clinical studies.

In table 1, row 2, we estimate the annual reporting burden for preparing the safety and effectiveness sections of a supplement to an approved application. This estimate does not include the time needed to conduct studies and clinical trials or other research from which the reported information is obtained.

Based on past submissions of human drug applications, new indication supplements for diagnostic radiopharmaceuticals, or both, we estimate that nine submissions will be received annually. We estimate the total time needed to prepare complete applications for supplements to new applications for diagnostic radiopharmaceuticals as approximately between 500 and 1,000 hours. We calculated the median of this estimate to arrive at approximately 750 hours. We further estimate that the total time needed to prepare the portions of the application that would be affected by this information collection as 6,750. As previously stated, this information collection does not impose any additional reporting burden for safety and effectiveness information on diagnostic radiopharmaceuticals beyond the estimated burden of 750 hours, because safety and effectiveness information is already required in § 314.50 and has been approved under OMB control number 0910–0001.

In the **Federal Register** of November 12, 2020 (85 FR 71923), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR NDAS AND SUPPLEMENTS TO APPROVED NDAS FOR DIAGNOSTIC RADIOPHARMACEUTICALS[1]

Manufacturers' activity (21 CFR Section)	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
NDAs (§§ 315.4, 315.5, and 315.6)	6	1	6	2,000	12,000
Supplements to Approved NDAs (§§ 315.4, 315.5, and 315.6)	9	1	9	750	6,750
Total					18,750

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall increase of 13 responses with a corresponding increase of 14,750 burden hours, including submissions involving NDAs. We attribute this adjustment to an increase in the number of submissions for NDAs for diagnostic radiopharmaceuticals we received over the past few years and because we are now capturing supplements to approved NDAs for diagnostic radiopharmaceuticals.

Dated: April 8, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–07639 Filed 4–13–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0878]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Premarket Notification for a New Dietary Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by May 14, 2021.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0330. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Premarket Notification for a New Dietary Ingredient

OMB Control Number 0910–0330—Extension

This information collection supports Agency regulations. Under section 413(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 350b(a)), the manufacturer or distributor of a new dietary ingredient (NDI), or of the dietary supplement that contains the NDI, must submit a premarket notification to FDA (as delegate for the Secretary of Health and Human Services) at least 75 days before introducing the product into interstate commerce or delivering it for introduction into interstate commerce, unless the NDI and any other dietary ingredients in the dietary supplement ''have been present in the food supply as an article used for food in a form in which the food has not been chemically altered'' (21 U.S.C. 350b(a)(1)). The notification must contain the information which provides the basis on which the manufacturer or distributor of the NDI or dietary supplement has concluded that the dietary supplement containing the NDI will reasonably be expected to be safe (21 U.S.C. 350b(a)(2)).

FDA's implementing regulation, § 190.6 (21 CFR 190.6), specifies the procedure for submitting a premarket NDI notification and the information the manufacturer or distributor must include in the notification. Under § 190.6(b), the notification must include the following: (1) The name and complete address of the manufacturer or distributor; (2) the name of the NDI; (3) a description of the dietary supplement(s) that contains the NDI, including the level of the NDI in the dietary supplement and the conditions of use recommended or suggested in the labeling of the dietary supplement, or if no conditions of use are recommended or suggested in the supplement's labeling, the ordinary conditions of use of the supplement; (4) the history of use or other evidence of safety establishing that the NDI will reasonably be expected to be safe when used under the conditions recommended or suggested in the labeling of the dietary supplement; and (5) the signature of a responsible person designated by the manufacturer or distributor.

These premarket notification requirements are designed to enable us to monitor the introduction into the marketplace of NDIs and dietary supplements that contain NDIs in order to protect consumers from ingredients and products whose safety is unknown. We use the information collected in NDI notifications to evaluate the safety of NDIs in dietary supplements and to support regulatory action against ingredients and products that are potentially unsafe.

FDA developed an electronic portal (Form FDA 3880) that respondents may use to electronically submit their notifications to us via the Center for Food Safety and Applied Nutrition (CFSAN) Online Submission Module (COSM). COSM was developed to assist respondents when filing regulatory submissions and is specifically designed to aid users wishing to file submissions with CFSAN. COSM allows safety and other information to be uploaded and submitted online via Form FDA 3880. This form provides a standard format to describe the history of use or other evidence of safety on which the manufacturer or distributor bases its conclusion that the NDI is reasonably expected to be safe under the conditions of use recommended or suggested in the labeling of the dietary supplement, as well as a description of the ingredient and other information. Firms that prefer to submit a paper notification in a format of their own choosing have the option to do so; however, Form FDA 3880 prompts a submitter to input the elements of an NDI notification in a standard format that we will be able to review efficiently. Form FDA 3880 may be accessed at *https://www.fda.gov/Food/DietarySupplements/NewDietaryIngredientsNotificationProcess/default.htm.*

Description of Respondents: The respondents to this collection of information are certain manufacturers and distributors in the dietary supplement industry.

In the **Federal Register** of October 16, 2020 (85 FR 65830), we published a 60-day notice requesting public comment on the proposed collection of information. A number of comments were received expressing general interest in labeling requirements applicable to dietary supplements. Other comments were received pertaining to related Agency draft guidance, one suggesting that FDA: (1) Failed to account for the cost of removing from the market dietary supplements suddenly deemed New Dietary Ingredients for the first time in the guidance; (2) substantially underestimated the number and cost of New Dietary Ingredient submissions that must be filed to comply with the guidance; and (3) grossly and dangerously undervalued the economic impact the guidance will have on the dietary supplement industry and the economy as a whole.

While we appreciate all feedback regarding Agency information collection activities, as we communicated in our notice of March 28, 2018 (83 FR 13281), the data analysis offered by the comment does not provide a basis upon which we can revise our burden estimate under the PRA. Regulatory requirements regarding premarket notification for new dietary ingredients are set forth under 21 CFR 190.6 and were established by final rule of September 23, 1997 (62 FR 49886). Notices published in the **Federal Register** in compliance with the PRA seek to improve information collection activities by evaluating our need for the information discussed in the notice and specific ways we might utilize technology and/or enhance our collection techniques and mechanisms to minimize burden on respondents who are subject to applicable those requirements. Finally, notices of availability for Agency guidance documents are published consistent with regulations in 21 CFR 10.115 (Good Guidance Practices), which provide for public comment at any time.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
190.6; Dietary Supplements	55	1	55	20	1,100

[1] There are no operating and maintenance costs associated with this collection of information.

Based on our experience with the information collection over the past 3 years, we estimate that 55 respondents will submit 1 premarket notification each. We estimate that extracting and summarizing the relevant information from what exists in the company's files and presenting it in a format that meets the requirements of § 190.6 will take approximately 20 hours of work per notification. We believe that the burden of the premarket notification requirement on industry is reasonable because we are requesting only safety and identity information that the manufacturer or distributor should already have developed to satisfy itself that a dietary supplement containing the NDI is in compliance with the FD&C Act.

If the required premarket notification is not submitted to FDA, section 413(a) of the FD&C Act provides that the dietary supplement containing the NDI is deemed to be adulterated under section 402(f) of the FD&C Act (21 U.S.C. 342(f)). Even if the notification is submitted as required, the dietary supplement containing the NDI is adulterated under section 402(f) of the FD&C Act unless there is a history of use or other evidence of safety establishing that the NDI, when used under the conditions recommended or suggested in the labeling of the dietary supplement, will reasonably be expected to be safe. This requirement is separate from and additional to the requirement to submit a premarket notification for the NDI. FDA's regulation on NDI notifications, § 190.6(a), requires the manufacturer or distributor of the dietary supplement or of the NDI to submit to FDA the information that forms the basis for its conclusion that a dietary supplement containing the NDI will reasonably be expected to be safe. Thus, § 190.6 only requires the manufacturer or distributor to extract and summarize information that should have already been developed to meet the safety requirement in section 413(a)(2) of the FD&C Act.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: April 8, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–07641 Filed 4–13–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1565]

Mark Reinhard: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) permanently debarring Mark Reinhard from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Reinhard was convicted of a felony under Federal law for conduct that relates to the regulation of a drug product under the FD&C Act. Mr. Reinhard was given notice of the proposed permanent debarment and an opportunity to request a hearing to show why he should not be debarred within the timeframe prescribed by regulation. Mr. Reinhard has not responded to the notice. Mr. Reinhard's failure to respond and request a hearing within the prescribed timeframe constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is applicable April 14, 2021.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, or at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa (ELEM–4029), Division of Enforcement, Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, or at *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(B) of the FD&C Act (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual from providing services in any capacity to a person that has an approved or pending drug product application if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product under the FD&C Act. On March 28, 2019, Mr. Reinhard entered a plea of guilty to one count of engaging in unlicensed wholesale distribution of prescription drugs in violation of sections 301(t), 303(b)(1)(D), and 503(e)(1)(A) of the FD&C Act (21 U.S.C. 331(t), 333(b)(1)(D), and 353(e)(1)(A)) and (18 U.S.C. 2), a felony offense under Federal law. On January 16, 2020, judgment of conviction was entered against Mr. Reinhard for this felony offense in the U.S. District Court for the Western District of Kentucky, Louisville Division.

The factual basis for this conviction is as follows: Mr. Reinhard was a pharmacist residing in the State of West Virginia and was employed by Meds 2 Go Express Pharmacy, Inc. (Meds 2 Go Express). From November 2010 through at least August 2012, he aided and abetted others, through Meds 2 Go Express, by engaging in unlicensed wholesale distribution of Tramadol from West Virginia to Alabama through Kentucky. Specifically, Mr. Reinhard aided and abetted individuals who combined, conspired, confederated, and agreed to engage in a scheme to sell, distribute, and dispense prescription drugs over the internet and to deliver those prescription drugs to customers, without the issuance of valid prescriptions. Under this scheme, customers would order prescription drugs from websites without ever seeing or speaking to a physician or medical practitioner. On the website, customers chose which prescription drugs they wished to order, and completed an online medical questionnaire with prepopulated answers that did not disqualify the customers from receiving the prescription drugs that they ordered. The website operator would then send the completed online medical questionnaires to doctors or individuals posing as doctors, who issued the prescriptions requested by the customers without first conducting an in-person medical examination, speaking with the customers, reviewing the customers' medical records, or otherwise verifying any of the information provided by the customer. These invalid prescriptions were issued outside of the usual course of professional practice and were not for a legitimate medical purpose. The website operators would then send the issued prescription by electronic means to pharmacies, including Meds 2 Go Express, to be filled. After filling a prescription, Meds 2 Go Express and other pharmacies would send the prescription drugs to the customers, who often were not in the same State as the pharmacy, via the U.S. Postal Service or other delivery methods. It was found that Mr. Reinhard distributed

the prescription drug Tramadol from West Virginia to a wholesale fulfillment pharmacy located in Alabama through Kentucky in violation of Federal law. Tramadol, as contained in the drug product ULTRAM and generic formulations, is a prescription painkiller that may induce psychic and physical dependence.

Based on this conviction, FDA sent Mr. Reinhard by certified mail on October 5, 2020, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the FD&C Act, that Mr. Reinhard was convicted, as set forth in section 306(*l*)(1) of the FD&C Act, of a felony under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. The proposal also offered Mr. Reinhard an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to file a timely request for a hearing would constitute an election not to use the opportunity for a hearing and a waiver of any contentions concerning this action. Mr. Reinhard received the proposal on October 10, 2020. He did not request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(a)(2)(B) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Reinhard has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the FD&C Act.

As a result of the foregoing finding, Mr. Reinhard is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application, effective (see **DATES**) (see sections 306(a)(2)(B) and (c)(2)(A)(ii) of the FD&C Act). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses in any capacity the services of Mr. Reinhard during his debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Mr. Reinhard provides services in any capacity to a person with an approved or pending drug product application during his period of debarment, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug application from Mr. Reinhard during his period of debarment, other than in connection with an audit under section 306 of the FD&C Act (section 306(c)(1)(B) of the FD&C Act). Note that, for purposes of sections 306 and 307 of the FD&C Act, a ''drug product'' is defined as a drug subject to regulation under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382) or under section 351 of the Public Health Service Act (42 U.S.C. 262) (section 201(dd) of the FD&C Act (21 U.S.C. 321(dd))).

Any application by Mr. Reinhard for special termination of debarment under section 306(d)(4) of the FD&C Act should be identified with Docket No. FDA–2020–N–1565 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20.

Publicly available submissions will be placed in the docket and will be viewable at *https://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Dated: April 7, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–07638 Filed 4–13–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0263]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before May 14, 2021.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–0263–30D, and project title for reference, to Sherrette Funn, the Reports Clearance Officer, or Email: *Sherrette.funn@hhs.gov,* or call 202–795–7714.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: The Protection of Human Subjects: Assurance Identification/IRB Certification/ Declaration of Exemption Form.

Type of Collection: Extension.

OMB No. 0990–0263 Office of the Assistant Secretary for Health, Office for Human Research Protections.

Abstract: The Office of the Assistant Secretary for Health, Office for Human Research Protections is requesting a three-year extension of the Protection of Human Subjects: Assurance Identification/IRB Certification/ Declaration of Exemption Form, OMB No. 0990–0263.

The information collected on the form is to provide a simplified procedure for institutions engaged in research conducted or supported by the Department of Health and Human Services (HHS) to satisfy the requirements of HHS regulations for the protection of human subjects at 45 CFR 46.103 for assurance identification and IRB certification and declare exemption status.

Likely Respondents: Institutions engaged in research involving human subjects where the research is supported by HHS. Institutional use of the form is also relied upon by other federal departments and agencies that have codified or follow the Federal Policy for the Protection of Human Subjects (Common Rule), which is codified for HHS at 45 CFR part 46, subpart A.

ANNUALIZED BURDEN HOUR TABLE

Form name	Number of respondents	Number of responses per respondent	Hours per response	Response burden hours
Protection of Human Subjects: Assurance Identification/IRB Certification/ Declaration of Exemption	14,000	2	0.5	14,000

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2021–07620 Filed 4–13–21; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0260]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before June 14, 2021.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–0260–60D, and project title for reference, to Sherrette Funn, email: *Sherrette.Funn@hhs.gov,* or call 202–795–7714 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Protection of Human Subjects: Assurance of Compliance with Federal Policy/IRB Review/IRB Recordkeeping/Informed Consent/Consent Documentation.

Type of Collection: Extension.

OMB No. 0990–0260 Office of the Assistant Secretary for Health, Office for Human Research Protections

Abstract: The Office of the Assistant Secretary for Health, Office for Human Research Protections is requesting a three-year extension of the Protection of Human Subjects: Assurance of Compliance with Federal Policy/IRB Review/IRB Recordkeeping/Informed Consent/Consent Documentation, OMB No. 0990–0260.

Information reported to the Federal departments and agencies under the Common Rule with respect to a satisfactory assurance is used to ensure that an institution engaged in non-exempt research involving human subjects conducted or supported by a Common Rule department or agency has (1) established adequate administrative policies and procedures for protecting the rights and welfare of human subjects in research, and (2) accepts that responsibility. Other reporting requirements are used to: Assess whether the institution is following the established procedures; ensure that Federal funds are not expended for unapproved human subjects research; and, determine if the approved status of an awarded grant, contract, or cooperative agreement should be reviewed, with the ultimate goal of maintaining or increasing human subject protections.

Likely Respondents: Institutions, institutional review boards and investigators.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Common rule provision	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
.103(b)(5), .113 [Pre-2018 Requirements]/.108(a)(4), .113 [2018 Requirements]—Incident Reporting, Suspension or Termination of IRB approval Reporting	5,200	1	5,200	1	5,200
Total			5,200		5,200

TABLE 2—ESTIMATED ANNUAL IRB RECORDKEEPING BURDEN

Common rule provision	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
.115 [Pre-2018 and 2018 Requirement]—Preparation and documentation of IRB activities	6,000	16	96,000	12	1,152,000
Total			96,000		1,152,000

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN

	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
.109(d) [Pre-2018 and 2018 Requirements]—Written notification of IRB approval or disapproval of research	6,000	25	150,000	0.5	75,000
.46.116(a) and (b) (Pre-2018 Requirements)/.46.116 (b), (c) and (d) [2018 Requirements]—Elements of informed consent and broad consent	6,000	25	150,000	0.5	75,000
.46.116(h)—[2018 Requirements]—Posting clinical trial consent form	100	3	300	0.5	150
.117(a) [Pre-2018 and 2018 Requirements]—Documentation of informed consent	6,000	25	150,000	0.5	75,000
.117(c)(2) [Pre-2018 and 2018 Requirements]—Written statement about the research when informed consent documentation is waived	6,000	10	60,000	1	60,000
Total	.....	.....	510,300	.....	285,150

Sherrrette A. Funn,

Paperwork Reduction Act Reports Clearance Office, Office of the Secretary.

[FR Doc. 2021–07622 Filed 4–13–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group Addiction Risks and Mechanisms Study Section.

Date: June 14–15, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, (301) 496–0726, *prenticekj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 8, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–07610 Filed 4–13–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Council of Councils.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Council of Councils.

Open: May 20, 2021.

Time: 11:00 a.m. to 4:15 p.m.

Agenda: Call to Order and Introductions; Announcements and Updates; Scientific Talks and Other Business of the Committee.

Place: National Institutes of Health, Building 1, One Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Name of Committee: Council of Councils.

Closed: May 21, 2021.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: Review of Grant Applications.

Place: National Institutes of Health, Building 1, One Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Open: May 21, 2021.

Time: 11:00 a.m. to 4:05 p.m.

Agenda: NIH Program Updates; Scientific Talks and Other Business of the Committee.

Place: National Institutes of Health, Building 1, One Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Franziska Grieder, D.V.M., Ph.D., Executive Secretary, Council of Councils, Director, Office of Research Infrastructure Programs, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, 6701 Democracy Boulevard, Room 948, Bethesda, MD 20892, *GriederF@mail.nih.gov.* 301–435–0744.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Council of Council's home page at *http://dpcpsi.nih.gov/council/* where an agenda will be posted before the meeting date.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research

Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: April 9, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–07612 Filed 4–13–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: May 18, 2021.

Open: 9:30 a.m. to 12:30 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Democracy I, Suite 800, Bethesda, MD 20892–4872, *http://videocast.nih.gov* (Virtual Meeting).

Virtual Access: The meeting will be videocast and can be accessed from the NIH Videocast *http://videocast.nih.gov*. Please note, the link to the videocast meeting will be posted within a week of the meeting date. Any member of the public may submit written comments no later than 15 days after the meeting.

Closed: 2:00 p.m. to 3:10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Democracy I, Suite 800, Bethesda, MD 20892–4872 (Virtual Meeting).

Contact Person: Melinda Nelson, Director, Office of Extramural Operations, 6701 Democracy Blvd., Democracy I, Suite 800, Bethesda, MD 20892–4872, (301) 435–5278, *nelsonm@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 8, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–07609 Filed 4–13–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Modeling and Analysis of Biological Systems Study Section.

Date: June 2–3, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Noffisat Oki, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 240–627–3648, *noffisat.oki@nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biomaterials and Biointerfaces Study Section.

Date: June 10–11, 2021.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph D Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 408–9465, *moscajos@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 8, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–07611 Filed 4–13–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2021–0012]

Assistance to Firefighters Grant Program

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Fire Prevention and Control Act of 1974, as amended, the Administrator of FEMA is publishing this notice describing the fiscal year (FY) 2020 Assistance to Firefighters Grant (AFG) Program application process, deadlines, and award selection criteria. This notice explains the differences, if any, between these guidelines and those recommended by representatives of the national fire service leadership during the annual meeting of the Criteria Development Panel, which was held December 11, 2019. The application period for the FY 2020 AFG Program was January 4, 2021 through February 12, 2021, and was announced on the AFG website at: *https://www.fema.gov/*

grants/preparedness/firefighters, as well as at *www.grants.gov.*

DATES: Grant applications for the FY 2020 AFG Program were accepted electronically at *https://go.fema.gov,* from January 4, 2021, through February 12, 2021, at 5:00 p.m. Eastern Standard Time.

ADDRESSES: Assistance to Firefighters Grant Branch, DHS/FEMA, 400 C Street SW, 3N, Washington, DC 20472–3635.

FOR FURTHER INFORMATION CONTACT: Catherine Patterson, Branch Chief, Assistance to Firefighters Grant Branch, 1–866–274–0960.

SUPPLEMENTARY INFORMATION: The AFG Program awards grants directly to fire departments, non-affiliated emergency medical services (EMS) organizations, and State Fire Training Academies (SFTAs) for the purpose of enhancing the health and safety of first responders and improving their abilities to protect the public from fire and fire-related hazards.

Applications for the FY 2020 AFG Program were submitted and processed online at *https://go.fema.gov.* Before the application period started, the FY 2020 AFG Program Notice of Funding Opportunity (NOFO) was published on FEMA's AFG Program website. The AFG Program website provides additional information and materials useful for FY 2020 AFG Program applicants including Frequently Asked Questions, Application Checklist, Get Ready Guide Narrative, Self-Evaluation Sheets for Vehicle Acquisition and Operations Safety, and a Cost Share Calculator. Based on past AFG Program application periods, FEMA anticipates receiving 10,000 to 15,000 applications for the FY 2020 AFG Program, and the ability to award approximately 2,000 grants.

Congressional Appropriations

For the FY 2020 AFG Program, Congress appropriated $355 million (Consolidated Appropriations Act, 2020, Pub. L. 116–93). From this amount, $319.5 million will be made available for FY 2020 AFG Program awards. In addition, Section 33 of the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. 2229), requires that a minimum of 10 percent of available funds be expended for Fire Prevention and Safety (FP&S) Program grants. FP&S Program awards will be made directly to local fire departments and to local, regional, State, or national entities recognized for their expertise in the fields of fire prevention and firefighter safety research and development. Funds appropriated for FY 2020 will be available for obligation and award until September 30, 2021.

The Federal Fire Prevention and Control Act of 1974 further directs FEMA to administer these appropriations according to the following requirements:

- *Career fire departments:* Not less than 25 percent of available grant funds.
- *Volunteer fire departments:* Not less than 25 percent of available grant funds.
- *Combination fire departments and departments using paid-on-call firefighting personnel:* Not less than 25 percent of available grant funds.
- *Open competition (career, volunteer, and/or combination fire departments and departments using paid-on-call firefighting personnel):* Not less than 10 percent of available grant funds awarded.
- *EMS providers including fire departments and nonaffiliated EMS organizations:* Not less than 3.5 percent of available grant funds awarded, with nonaffiliated EMS providers receiving no more than 2 percent of the total available grant funds.
- *SFTAs:* Not more than 3 percent of available grant funds shall be collectively awarded to SFTA applicants, with a maximum of $1 million per applicant.
- *Vehicles:* Not more than 25 percent of available grant funds may be used for the purchase of vehicles; 10 percent of those vehicle funds will be dedicated to the funding of ambulances. Vehicle funds will be distributed as equally as possible among urban, suburban, and rural community applicants.
- *Micro grants:* This is a voluntary funding limitation choice made by the applicant for requests submitted within the operations and safety activity; it is not an additional funding opportunity. Micro grants are awards that have a Federal participation (share) that does not exceed $50,000. Only fire departments and nonaffiliated EMS organizations are eligible to choose micro grants, and the only eligible micro grants requests are for training, equipment, personal protective equipment (PPE), and wellness and fitness activities. Applicants that select micro grants as a funding opportunity may receive additional consideration for award. If an applicant selects micro grants in their application, they will be limited in the total amount of funding their organization can be awarded; if they are requesting funding in excess of $50,000 Federal participation, they should not select micro grants.

Background of the AFG Program

Since 2001, the AFG Program has helped firefighters and other first responders obtain critically needed equipment, protective gear, emergency vehicles, training, and other resources needed to protect emergency personnel and the public from fire and related hazards. FEMA awards grants on a competitive basis to the applicants that best address the AFG Program's priorities and provide the most compelling justification. Applications that best address AFG Program priorities, as identified in the Application Evaluation Criteria, will be reviewed by a peer review panel composed of fire service personnel.

The AFG Program has three program activities:

- Operations and Safety
- Vehicle Acquisition
- Regional Projects

The priorities for each activity are fully outlined in the NOFO.

Application Evaluation Criteria

Prior to making a grant award, FEMA is required by 31 U.S.C. 3354, as amended by the Payment Integrity Information Act of 2019, Public Law 116–117 (2020), 41 U.S.C. 2313, and 2 CFR 200.206 to review information available through any Office of Management and Budget (OMB) designated repositories of government-wide eligibility qualification or financial integrity information. Therefore, application evaluation criteria may include the following risk-based considerations of the applicant: (1) Financial stability; (2) quality of management systems and ability to meet management standards; (3) history of performance in managing Federal awards; (4) reports and findings from audits; and (5) ability to effectively implement statutory, regulatory, or other requirements.

FEMA will rank all complete and submitted applications based on how well they match program priorities for the type of jurisdiction(s) served. Answers to activity specific questions provide information used to determine each application's ranking relative to the stated program priorities.

Funding priorities and criteria for evaluating AFG Program applications are established by FEMA based on the recommendations from the Criteria Development Panel (CDP). CDP is comprised of fire service professionals who make recommendations to FEMA regarding the creation of new, or the modification of previously established, funding priorities, as well as developing criteria for awarding grants. The content of the NOFO reflects implementation of CDP's recommendations with respect to the priorities and evaluation criteria for awards.

The nine major fire service organizations represented on the CDP are:

- International Association of Fire Chiefs
- International Association of Fire Fighters
- National Volunteer Fire Council
- National Fire Protection Association
- National Association of State Fire Marshals
- International Association of Arson Investigators
- International Society of Fire Service Instructors
- North American Fire Training Directors
- Congressional Fire Service Institute

Review and Selection Process

AFG Program applications are reviewed through a multi-phase process. All applications are electronically pre-scored and ranked based on how well they align with the funding priorities outlined in this notice. Applications with the highest pre-score rankings are then scored competitively by (no less than three) members of a Peer Review Panel. Applications will also be evaluated through a series of internal FEMA review processes for completeness, adherence to programmatic guidelines, technical feasibility, and anticipated effectiveness of the proposed project(s). Below is the process by which applications will be reviewed:

i. Pre-Scoring Process

The application undergoes an electronic pre-scoring process based on established program priorities listed within the NOFO and answers to activity specific questions within the online application. Application narratives are not reviewed during pre-scoring. Request details and budget information should comply with program guidance and statutory funding limitations. The pre-score is 50 percent of the total application score.

ii. Peer Review Panel Process

Applications with the highest pre-score will undergo peer review. The peer review is comprised of fire service representatives recommended by the organizations represented on the CDP. The panelists assess the merits of each application based on the narrative section of the application, including the evaluation elements listed in the Narrative Evaluation Criteria below. Panelists independently score each project within the application, discuss the merits and/or shortcomings of the application with their peers, and document the findings. A consensus is not required. The panel score is 50 percent of the total application score.

iii. Technical Evaluation Process

The highest ranked applications are considered within the fundable range. Applications that are in the fundable range undergo both a technical review by a subject matter expert, as well as a FEMA AFG Branch review prior to being recommended for an award. The FEMA AFG Branch will assess the request with respect to costs, quantities, feasibility, eligibility, and recipient responsibility prior to recommending an application for award. Once the technical evaluation process is complete, the cumulative score for each application will be determined and FEMA will generate a final ranking of applications. FEMA will award grants based on this final ranking and the statutorily required funding limitations listed in this notice and the NOFO.

Narrative Evaluation Criteria

1. Financial Need (25 Percent)

Applicants should describe their financial need and how consistent it is with the intent of the AFG Program. This statement should include details describing the applicant's financial distress, summarized budget constraints, unsuccessful attempts to secure other funding, and proof that their financial distress is out of their control.

2. Project Description and Budget (25 Percent)

This statement should clearly explain the applicant's project objectives and the relationship between those objectives and the applicant's budget and risk analysis. The applicant should describe the activities, including program priorities or facility modifications, ensuring consistency with project objectives, the applicant's mission, and any national, State, and/or local requirements. Applicants should link the proposed expenses to operations and safety, as well as the completion of the project goals.

3. Cost Benefit (25 Percent)

Applicants should describe how they plan to address the operations and personal safety needs of their organization, including cost effectiveness and sharing assets. This statement should also include details about gaining the maximum benefits from grant funding by citing reasonable or required costs, such as specific overhead and administrative costs. The applicant's request should also be consistent with their mission and identify how funding will benefit their organization and personnel.

4. Statement of Effect on Daily Operations (25 Percent)

This statement should explain how these funds will enhance the applicant's overall effectiveness. It should address how an award will improve daily operations and reduce the applicant's risks. Applicants should include how frequently the requested items will be used, and in what capacity. Applicants should also indicate how the requested items will help the community and increase the organization's ability to save additional lives or property. Jurisdictions that demonstrate their commitment and proactive posture to reducing fire risk, by explaining their code enforcement (to include Wildland Urban Interface code enforcement) and mitigation strategies (including whether or not the jurisdiction has a FEMA-approved mitigation strategy) may receive stronger consideration under this criterion.

Eligible Applicants

Fire Departments: Fire departments operating in any of the 50 States, as well as fire departments in the District of Columbia, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or any federally-recognized Indian Tribe or Tribal organization.

A fire department is an agency or organization having a formally recognized arrangement with a State, territory, local, or Tribal authority (city, county, parish, fire district, township, town, or other governing body) to provide fire suppression to a population within a geographically fixed primary first due response area.

Nonaffiliated EMS organizations: Nonaffiliated EMS organizations operating in any of the 50 States, as well as the District of Columbia, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or any federally-recognized Indian Tribe or Tribal organization.

A nonaffiliated EMS organization is an agency or organization that is a public or private nonprofit emergency medical services entity providing medical transport that is not affiliated with a hospital and does not serve a geographic area in which emergency medical services are adequately provided by a fire department.

FEMA considers the following as hospitals under the AFG Program:

- Clinics
- Medical centers

- Medical colleges or universities
- Infirmaries
- Surgery centers
- Any other institutions, associations, or foundations providing medical, surgical, or psychiatric care and/or treatment for the sick or injured.

State Fire Training Academies: SFTAs operating in any of the 50 States, as well as the District of Columbia, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of Puerto Rico. Applicants must be designated either by legislation or by a Governor's declaration as the sole fire service training agency within a State, territory, or the District of Columbia. The designated SFTA shall be the only agency/bureau/division, or entity within that State, territory, or the District of Columbia.

Ineligibility

- To avoid a duplication of benefits, FEMA reserves the right to review all program activities or grant applications where two or more organizations share a single facility. To be eligible as a separate organization, two or more fire departments or nonaffiliated EMS organizations will have different funding streams, personnel rosters, or Employer Identification Numbers (EINs). If two or more organizations share facilities and each submits an application in the same program area (*e.g.,* Equipment, Modify Facilities, PPE, Training, and/or Wellness and Fitness Programs) FEMA will carefully review each program for eligibility.
- Fire-based EMS organizations are not eligible to apply as nonaffiliated EMS organizations. Fire-based EMS training and equipment must be requested by a fire department under the AFG Program component program of Operations and Safety.
- Eligible applicants may submit only one application for each activity (*e.g.,* Operations and Safety, Regional, etc.), but may submit for multiple projects within each activity. Under the Vehicle Activity, applicants may submit one application for vehicles for their department and one separate application to host a Regional vehicle. Duplicate applications (more than one application in the same activity) may be disqualified.
- An Operations and Safety applicant may submit one application for an eligible project (i*e.g.,* turn out gear); it may not submit a Regional application for the same project.

Statutory Limits to Funding

- Congress has enacted statutory limits to the amount of funding that a grant recipient may receive from the AFG Program in any single fiscal year based on the population served (15 U.S.C. 2229(c)(2)). Awards will be limited based on the size of the population protected by the applicant, as indicated below. Notwithstanding the annual limits stated below, the Administrator of FEMA may not award a grant in an amount that exceeds one percent of the available grant funds in such fiscal year, except where it is determined that such recipient has an extraordinary need for a grant in an amount that exceeds the one percent aggregate limit.
- In the case of a recipient that serves a jurisdiction with 100,000 people or fewer, the amount of available grant funds awarded to such recipient shall not exceed $1 million in any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 100,000 people, but not more than 500,000 people, the amount of available grant funds awarded to such recipient shall not exceed $2 million in any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 500,000, but not more than 1 million people, the amount of available grant funds awarded to such recipient shall not exceed $3 million in any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 1 million people but not more than 2.5 million people, the amount of available grant funds awarded to such recipient is subject to the one percent aggregate cap of $3.55 million for FY 2020, but FEMA may waive this aggregate cap in individual cases where FEMA determines that a recipient has an extraordinary need for a grant that exceeds the aggregate cap; if FEMA waives the aggregate cap, the amount of grant funds awarded to such recipient shall not exceed $6 million for any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 2.5 million people, the amount of available grant funds awarded to such recipient is subject to the one percent aggregate cap of $3.55 million for FY 2020, but FEMA may waive this aggregate cap in individual cases where FEMA determines that a recipient has an extraordinary need for a grant that exceeds the aggregate cap; if FEMA waives the aggregate cap, the amount of grant funds awarded to such recipient shall not exceed $9 million for any fiscal year.
- FEMA may not waive the population-based limits on the amount of grant funds awarded as set by 15 U.S.C. 2229(c)(2)(A).

The cumulative total of the Federal share of awards in Operations and Safety, Regional, and Vehicle Acquisition activities will be considered when assessing award amounts and any limitations thereto. Applicants may request funding up to the statutory limit on each of their applications.

For example, an applicant that serves a jurisdiction with more than 100,000 people, but not more than 500,000 people, may request up to $2 million on their Operations and Safety Application, and up to $2 million on their Vehicle Acquisition request. However, should both grants be awarded, the applicant would have to choose which award to accept if the cumulative value of both applications exceeds the statutory limits.

Cost Sharing and Maintenance of Effort

Grant recipients must share in the costs of the projects funded under this grant program as required by 15 U.S.C. 2229(k)(1) and in accordance with applicable Federal regulations at 2 CFR part 200, but they are not required to have the cost-share at the time of application nor at the time of award. However, before a grant is awarded, FEMA validates that the grant recipient has provided sufficient evidence that the cost-share requirement will be fulfilled during the period of the grant award.

In general, an eligible applicant seeking a grant shall agree to make available non-Federal funds equal to not less than 15 percent of the grant awarded. However, the cost share will vary as follows based on the size of the population served by the organization, with exceptions to this general requirement for entities serving smaller communities:

- Applicants that serve populations of 20,000 or less shall agree to make available non-Federal funds in an amount equal to not less than 5 percent of the grant awarded.
- Applicants serving areas with populations above 20,000, but not more than 1 million, shall agree to make available non-Federal funds in an amount equal to not less than 10 percent of the grant awarded.
- Applicants serving areas with populations above 1 million shall agree to make available non-Federal funds in an amount equal to not less than 15 percent of the grant awarded.

The cost share for SFTAs will apply the requirements above based on the total population of the State.

The cost share for a regional application will apply the requirements above based on the aggregate population of the primary first due response areas

of the host and participating partner organizations that execute a Memorandum of Understanding as described in Appendix B, Section J, Regional projects, of the FY 2020 AFG Program NOFO.

On a case-by-case basis, FEMA may allow a grant recipient that may already own assets (equipment or vehicles), acquired with non-Federal cash, to use the trade-in allowance/credit value of those assets as ''cash'' for the purpose of meeting the cost-share obligation of their AFG Program award. In-kind, cost-share matches are not allowed.

Grant recipients under this grant program must also agree to a maintenance of effort requirement as required by 15 U.S.C. 2229(k)(3) (referred to as a ''maintenance of expenditure'' requirement in that statute). A grant recipient shall agree to maintain during the term of the grant the applicant's aggregate expenditures relating to the activities allowable under the NOFO at not less than 80 percent of the average amount of such expenditures in the two fiscal years preceding the fiscal year in which the grant amounts are received.

In cases of demonstrated economic hardship, and at the request of the grant recipient, the Administrator of FEMA may waive or reduce a grant recipient's cost share requirement or maintenance of expenditure requirement. AFG Program applicants for FY 2020 must indicate at the time of application whether they are requesting a waiver and whether the waiver is for the cost share requirement, for the maintenance of effort requirement, or both. As required by statute, the Administrator of FEMA is required to establish guidelines for determining what constitutes economic hardship. FEMA has published these guidelines at FEMA's website: *https://www.fema.gov/sites/default/files/2020-04/Eco_Hardship_Waiver_FPS_SAFER_AFG_IB_FINAL.pdf.*

Prior to the start of the FY 2020 AFG Program application period, FEMA conducted applicant internet webinars to inform potential applicants about the AFG Program. In addition, FEMA provided applicants with information at the AFG Program website: *https://www.fema.gov/grants/preparedness/firefighters* to help them prepare quality grant applications. The AFG Program Help Desk is staffed throughout the application period to assist applicants with the automated application process as well as assistance with any questions.

Applicants can reach the AFG Program Help Desk through a toll-free telephone number during normal business hours (1–866–274–0960) or electronic mail *firegrants@fema.dhs.gov.*

Application Process

Organizations may submit one application per application period in each of the three AFG Program activities (*e.g.,* one application for Operations and Safety, one for Vehicle Acquisition, and/or a separate application to be a Joint/Regional Project host). If an organization submits more than one application for any single AFG Program activity (*e.g.,* two applications for Operations and Safety, two for Vehicles, etc.), either intentionally or unintentionally, both applications may be disqualified.

Applicants accessed the grant application electronically at *https://go.fema.gov.* The application is also accessible from the U.S. Fire Administration's website *http://www.usfa.fema.gov* and *http://www.grants.gov.* New applicants must register and establish a user name and password for secure access to the grant application. Previous AFG Program applicants must use their previously established user name and passwords.

Applicants are expected to answer questions about their grant request that reflect the AFG Program funding priorities, described below. In addition, each applicant must complete four separate narratives for each project or grant activity requested. Grant applicants will also provide relevant information about their organization's characteristics, call volume, and existing organizational capabilities.

System for Award Management (SAM)

Per 2 CFR 25.200, all Federal grant applicants and recipients must register at *https://SAM.gov.* SAM is the Federal Government's System for Awards Management, and registration is free of charge. Applicants must maintain current information in SAM that is consistent with the data provided in their AFG Program grant application and in the Dun & Bradstreet (DUNS) database. FEMA may not accept any application, process any awards, or consider any payment or amendment requests, unless the applicant or grant recipient has complied with the requirements to provide a valid DUNS number and an active SAM registration. The grant applicant's banking information, EIN, organization/entity name, address, and DUNS number must match the same information provided in SAM.

Criteria Development Panel Recommendations

If there are any differences between the published AFG Program guidelines and the recommendations made by the CDP, FEMA must explain them and publish the information in the **Federal Register** prior to awarding any grant under the AFG Program. For FY 2020, FEMA accepted, and will implement, all but two of the CDP's recommendations for the prioritization of eligible activities.

Adopted Recommendations for FY 2020

The FY 2020 AFG Program NOFO contains some changes to definitions, descriptions, and priority categories. Changes to the FY 2020 AFG Program NOFO include:

- Under Sections D—Application and Submission Information, E—Application Review Information, F—Federal Award Administration Information, G—DHS Awarding Agency Contact and Resource. Information, and H—Additional Information:
  - Various grants management changes due to the recent OMB revision to 2 CFR In particular, changes regarding SAM registration, performance measures, procurement, closeout, and termination are included.
- Under Federal Award Information:
  - Period of performance for AFG Program awards is 24 months.
- Under Supporting Definitions:
  - Paid on-call/Stipend departments are added to the definition for Combination Fire Department.
- Under Application Tips:
  - Explanation of AFG Program-approved seated riding positions was added.
- Under Training Activity:
  - Rental of Audio/Visual equipment was added as eligible activity.
- Under Operations and Safety Activity:
  - Radio over internet Protocol (RoIP) communication equipment was added as a Medium Priority.
  - Integrated thermal imaging cameras were added to the ineligible list under the PPE category.
- Under Modifications to Facility Activity:
  - Intruder alerting systems and deployment notification systems were added as ineligible.
- Under Regional Applications:
  - Guidance requiring purchases from same vendor added.
- Under Environmental Planning and Historic Preservation (EHP):
  - Updated process for EHP added.
- Under Award Administration Information (Appendix C):

○ Updated process for Economic Hardship Waiver added.

○ Excess Funds Restrictions specifies High Priority items as eligible under this option.

○ Updated instruction on supporting documentation is added for advance and reimbursement payment request.

Recommendations Not Adopted for FY 2020

• The CDP recommended that fire departments implement a requirement where National Fire Protection Association (NFPA) standards listed as 1582 physicals become a requirement for all awards. FEMA recommends evaluating the impact of this requirement prior to implementation. Data on fire departments' abilities to meet this standard was collected in the FY 2020 application. It will not be considered during the application review.

• The CDP recommended that FEMA adopt new definitions for career and combination departments to align with NFPA changes in the 1710 and 1720 standards. FEMA is unable to adopt this recommendation as it conflicts with statutory definitions.

Authority: 15 U.S.C. 2229.

Robert Fenton,

Senior Official Performing the Duties of the FEMA Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–07576 Filed 4–13–21; 8:45 am]

BILLING CODE 9111–64–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2020–N125; FXES11140200000–212–FF02ENEH00]

Application for an Incidental Take Permit; Renewable (Wind and Solar) Energy, Power Line, and Communication Tower Habitat Conservation Plan for the Lesser Prairie-Chicken; Colorado, Kansas, New Mexico, Oklahoma and Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice advises the public that LPC Conservation LLC (applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP) supported by the *Renewable (Wind and Solar) Energy, Power Line, and Communication Tower Habitat Conservation Plan for the Lesser Prairie-chicken; Colorado, Kansas, New Mexico, Oklahoma and Texas* (HCP). The applicant has applied to the Service for the ITP pursuant to the Endangered Species Act. The requested ITP, if approved, would authorize incidental take of the lesser prairie-chicken resulting from activities covered by the HCP (*e.g.,* wind, solar, transmission lines, and communication towers) and incidental take resulting from conservation actions taken to avoid, minimize, and mitigate impacts of the incidental take of the LEPC that result from covered activities. If approved, the requested ITP would become effective should the LEPC become federally listed during the life of the ITP and HCP. With this notice we also announce the availability of a draft environmental assessment (EA) that has been prepared to evaluate the ITP application in accordance with the requirements of the National Environmental Policy Act. We are making the ITP application package, including the HCP and draft EA, available for public review and comment.

DATES: *Submission of comments:* We will accept comments received or postmarked on or before May 14, 2021.

ADDRESSES: *Obtaining documents:* You may obtain copies of the ITP application, HCP, draft EA, or other related documents on the internet at *https://www.fws.gov/southwest/es/ArlingtonTexas.*

Submitting comments: You may submit written comments by email to *arles@fws.gov.* Please note that your comment is in reference to the above-referenced HCP. For more information, see Public Availability of Comments.

FOR FURTHER INFORMATION CONTACT: Debra Bills, Field Supervisor, U.S. Fish and Wildlife Service, Arlington, Texas, Ecological Services Office; telephone 817–277–1100. Hearing or speech impaired individuals may call the Federal Relay Service at 800–877–8339 for TTY service.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), make available the *Renewable (Wind and Solar) Energy, Power Line, and Communication Tower Habitat Conservation Plan for the Lesser Prairie-chicken; Colorado, Kansas, New Mexico, Oklahoma and Texas* (HCP). The LPC Conservation LLC (applicant) has applied for an incidental take permit (ITP). If approved, the requested ITP would become effective and authorize incidental take of the lesser prairie-chicken (*Tympanuchus pallidicinctus;* LEPC) should the LEPC become federally listed during the life of the ITP and HCP under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*).

We are considering issuing a section 10(a)(1)(B) ITP for the LEPC, a species that is not currently listed under the ESA, in response to the applicant's application and supporting HCP. While our 2016 revised HCP handbook (Handbook) provides guidance that an ITP and supporting HCP include at least one ESA-listed animal species, the issuance of this ITP could provide for LEPC conservation in several ways. First, the proposed HCP may meet the Service's conservation recommendation for the LEPC because it emphasizes avoidance and minimization, and focuses mitigation in areas that can serve as conservation strongholds for this species. Depending on enrollment, this mitigation strategy could help to preclude the need to list the LEPC or could help to recover the LEPC, if listing is warranted in the future. Second, the proposed HCP would provide taxpayer and industry savings in the use of one conservation planning strategy. In contrast, developing a CCAA prior to a future listing and developing an HCP, or multiple HCPs, after a potential future listing is inefficient for both the Federal agencies and industry participants. The proposed HCP would be more efficient because potential participants could enroll on a project-by-project basis either pre- or post a future listing. This allows for greater, more consistent, and more predictable conservation efforts to be undertaken. Third, with this proposed HCP, the Service would issue a permit that does not go into effect until a future listing, if it occurs. This is the same as our practice for permits associated with CCAAs and ITPs associated with multi-species HCPs that include unlisted species. Finally, the proposed HCP also supports States' management ability of the unlisted species similar to CCAAs in that the proposed ITP does not become effective until such time that the covered species may be listed. Prelisting participation is voluntary for participants and provides the affected States continued regulatory authority regarding wildlife species.

We believe considering a HCP without a currently listed species, in this instance, is supported by the Conference Report to the 1982 Amendments that created HCPs (Conference Report) which expressly considered both listed and unlisted species, H.R. Rep No. 97–835, at 30 (1982). The Conference Report states that ''although the conservation plan is keyed to the permit provisions of the Act which only apply to listed species, the committee intends that conservation plans may address both listed and

unlisted species.'' *Id.* The Conference Report continues by stating that the inclusion of unlisted species supports the Congressional purpose that the species not be viewed in isolation but in terms of their relationship to the ecosystem as a whole. This broad view of conservation, including conservation planning and permitting for unlisted species, is ''consistent with the purposes of several other fish and wildlife statutes (e.g, Fish and Wildlife Act of 1956, Fish and Wildlife Coordination Act) which are intended to authorize the Secretary to cooperate with the States and private entities on matters regarding conservation of all fish and wildlife resources of this nation.'' *Id.* The Conference Report encourages the Secretary to develop ''creative partnerships between the public and private sectors'' and notes that the Secretary ''may utilize this provision to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species.'' *Id.*

Through the proposed minimization and mitigation measures, the HCP would provide long-term commitments regarding the conservation of LEPC that would fully offset impacts to the species associated with habitat loss and fragmentation resulting from implementation of the covered activities by participants in the HCP. The HCP would provide voluntary pre-listing conservation that may be used to evaluate the species' status in a future listing decision, and potential participants would have the option to enroll in the HCP prior to or after a potential future listing decision. As such, processing the ITP application and HCP under 10(a)(1)(B) could provide for long-term conservation for the LEPC and more flexibility and long-term regulatory certainty for participants, as described above.

Based on the information above, we have determined that processing this ITP application and HCP is consistent with the Conference Report and current regulations, and, therefore, we may process this ITP application and HCP under section 10(a)(1)(B) of the ESA and its implementing regulations (50 CFR 17.22(b) and 17.32(b)).

In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), we advise the public that:

1. We have prepared a draft environmental assessment (EA) to evaluate the ITP application. We are accepting comments on the ITP application and draft EA.

2. The applicant has developed an HCP which describes the measures the applicant has volunteered to take to meet the issuance criteria for a 10(a)(1)(B) ITP associated with an HCP. The issuance criteria for HCPs are found at 50 CFR 17.22(b)(2) and 50 CFR 17.32(b)(2).

3. The HCP would be implemented by those parties who voluntarily enroll, providing conservation upon enrollment, but the subject ITP would not be effective until such time as the cover species may be listed in the future. The ITP would be effective only for those participants fully implementing the conservation plan.

4. As described in the HCP, the potential incidental take of LEPC could result from otherwise lawful, voluntary activities covered by the HCP.

5. We have included the alternative of issuing an enhancement of survival permit (ESP) under section 10(a)(1)(A) of the ESA, the Candidate Conservation Agreement with Assurances Policy, and implementing regulations (50 CFR 17.22(d) and 17.32(d)), and we will accept comments related to this alternative.

Background

Section 9 of the ESA and our implementing regulations at 50 CFR part 17 prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. Take is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct'' (16 U.S.C. 1538(19)). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity.

Regulations governing such take of endangered and threatened species are found at 50 CFR 17.21–22 and 50 CFR 17.31–32, respectively.

Proposed Action

The proposed action involves the issuance of a 10(a)(1)(B) incidental take permit (ITP) to LPC Conservation LLC (applicant) and approval of the proposed *Renewable (Wind and Solar) Energy, Power Line, and Communication Tower Habitat Conservation Plan for the Lesser Prairie-chicken; Colorado, Kansas, New Mexico, Oklahoma and Texas* (HCP). The ITP would cover incidental ''take'' of the LEPC associated with wind, solar, power line, and communication tower buildout, including ancillary (*e.g.,* access road, lay down yard, power line interconnection) ground-disturbing activities associated with these project types within the HCP permit area that could affect potentially suitable LEPC habitat (the ''covered activities''). In addition, the covered activities include other ground disturbing activities which could occur during some types of repairs required during the operations and maintenance phase, project repowering, or project decommissioning within the permit area.

The requested term of the ITP is 30 years, and the ITP would authorize incidental take of LEPC associated with impacts to up to 500,000 acres of suitable LEPC habitat within the plan area (approximately 1.7 percent of the 30,178,085 total acres of potentially suitable LEPC habitat within the plan area) resulting from implementation of the covered activities by participants in the HCP.

To meet the requirements of a section 10(a)(1)(B) ITP, the applicant has developed, and proposes to implement, the HCP, which describes the conservation measures the applicant has voluntarily agreed to undertake. These measures will be implemented prior to or concurrent with proposed impacts. These measures include LEPC habitat conservation through enhancement and restoration. On average, for every acre of LEPC habitat impacted, 2 acres of perpetual LEPC habitat conservation would be required. Of those 2 acres, 1 acre would consist of restoration and the other acre would consist of enhancement. Restoration actions include removal of woody vegetation encroachment, removal infrastructure, and conversion of cropland to grasslands. Enhancement efforts primarily include actions to maintain or enhance the quality of existing LEPC habitat, such as prescribed burning, prescribed grazing, and chemical and mechanical manipulation of the vegetative community. Implementation of the proposed LEPC habitat conservation measures are projected to result in no net loss of LEPC habitat. The ITP would authorize incidental take that may result from the implementation of the proposed conservation measures, including activities occurring on mitigation parcels that, while providing a long-term benefit to LEPC, may have temporary impacts to the species.

The HCP, including the proposed conservation measures, was developed in coordination with the Service. Implementation of the HCP requirements, including the conservation measures, would be required for all participants in the HCP regardless of the listing status of the LEPC. The proposed conservation measures, once implemented, would

fully offset impacts to the LEPC associated with habitat loss and fragmentation resulting from implementation of the covered activities, and would provide a long-term conservation benefit to LEPC.

Alternatives

We are considering two alternatives to the proposed action as part of this process: Issuance of an Enhancement of Survival Permit for a Candidate Conservation Agreement With Assurances, and a No Action Alternative.

1. Issuance of an Enhancement of Survival Permit for a Candidate Conservation Agreement With Assurances

Under this alternative, instead of approving the HCP and issuing an ITP, the Service would issue an enhancement of survival permit (ESP) pursuant to section 10(a)(1)(A) of the ESA, supported by a candidate conservation agreement with assurances (CCAA), to the applicant for incidental take associated with the covered activities in the CCAA. The proposed covered activities in the CCAA would be the same as those proposed in the HCP. The permit term for the ESP would be 30 years. Under this alternative, it is assumed the applicant (in the role of CCAA administrator) would require enrolled projects to implement all the avoidance, minimization, mitigation, monitoring, adaptive management, and reporting processes described in the HCP as part of the CCAA. It is anticipated that a similar level of wind, solar, power line, and communication tower development within the permit area would occur under an HCP or a CCAA for each project. However, the enrollment of projects under the CCAA would end upon the future date of a possible listing of the covered species; whereas, the HCP enrollment would continue for the duration of the permit. We anticipate that this alternative would result in the same level of potential impacts to LEPC and the same level of LEPC conservation as what is proposed in the HCP for those enrolled prior to listing, but projects after a potential listing would need to develop their own HCPs or find an alternative coverage for incidental take. This action would be consistent with existing Service guidance for conservation actions of unlisted species.

2. No Action Alternative

Under this alternative, the Service would not issue an ITP or an ESP, and therefore this programmatic permitting structure would not be available for willing participants. While the LEPC remains unlisted, potentially participating entities (*i.e.,* wind, solar, power line, and communication tower companies) would have little economic or legal incentive to voluntarily initiate the conservation or management activities that are proposed in the HCP to benefit the LEPC. Therefore, unless potentially participating entities voluntarily participate in another programmatic permitting option, should one be available, or voluntarily develop their own stand along permitting option, conservation measures above and beyond those directed by existing Federal, State, and local laws, policies, or regulations likely would not be implemented, and the LEPC would not gain additional protections and conservation benefits over what currently exists. On private lands, where the State or Federal government has no authority to protect or direct the management of LEPC habitat, LEPC conservation programs would be implemented entirely at the discretion of the landowners and private developers.

Next Steps

We will evaluate the permit application, HCP, associated documents, and comments we receive to determine whether the ITP application meets the requirements of ESA, NEPA, and implementing regulations, or whether the issuance of an ESP should be considered. If we determine that all requirements are met, we will approve the HCP and issue the ITP under section 10(a)(1)(B) of the ESA (16 U.S.C. 1531 *et seq.*) to the applicant in accordance with the terms of the HCP and specific terms and conditions of the authorizing ITP. Alternatively, we could approve this plan as a CCAA and issue an ESP under section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and applicable regulations. We will consider comments on both the alternative and the denial of issuing a permit in our final decision. We will not make our final decision until after the 30-day comment period ends, and we have fully considered all comments received during the public comment period.

Public Availability of Comments

All comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under the authority of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Amy L. Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2021–07475 Filed 4–13–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[212L1109AF LLUTC030000.L14400000FR0000; UTU–91524]

Notice of Realty Action: Recreation and Public Purposes Act Classification; Washington County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) examined certain public lands in Washington County, Utah, and found them suitable for classification for lease or conveyance to the Washington County Water Conservancy District (WCWCD) under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, the Taylor Grazing Act, and Executive Order 6910. WCWCD proposes to use the 10.87-acre parcel described below as a camping and recreation area adjacent to a proposed reservoir near the junction of Interstate 15 and State Route 17.

DATES: Submit written comments regarding this proposed classification on or before June 1, 2021.

ADDRESSES: Comments may be emailed to *blm_ut_sgfo_comments@blm.gov* or mailed to the BLM St. George Field

Office, Field Manager, 345 E Riverside Drive, St. George, Utah 84790. The BLM will not consider comments received via telephone calls. Detailed information including, but not limited to, a proposed development and management plan and documentation relating to compliance with applicable environmental and cultural resource laws, the documents are available on the BLM's E-Planning website at *https://go.usa.gov/xsCrb.*

FOR FURTHER INFORMATION CONTACT: Stephanie Trujillo, Realty Specialist, email: *strujill@blm.gov,* phone: (435) 688–3343. Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to leave a message or question for the above individual. The FRS is available 24 hours a day, 7 days a week. Replies are provided during normal business hours.

SUPPLEMENTARY INFORMATION: The WCWCD has not applied for more than the 6,400-acre limitation for recreation uses in a year (or 640 acres if a nonprofit corporation or association), or more than 640 acres for each of the programs involving public resources other than recreation.

The WCWCD submitted an application in compliance with the regulations at 43 CFR 2741.4(b). The lands examined and identified as suitable for lease or conveyance under the R&PP Act are legally described as:

Salt Lake Meridian, Utah

T. 40 S., R. 13 W.,
Sec. 33, lots 16, 18, and 19.

The area described contains 10.87 acres, according to the official plat of the survey of the said land, on file with the BLM.

The lands are not needed for any Federal purposes. The lease or conveyance of the lands for recreation or public purposes use conforms with the BLM St. George Field Office Resource Management Plan, approved in March 1999, and would be in the public's interest. The BLM analyzed the parcel in a site-specific Environmental Assessment, DOI–BLM–UT–C030–2012–0001–EA.

All interested parties will receive a copy of this notice once it is published in the **Federal Register**. A copy of this notice with information about this proposed realty action will be published in the newspaper of local circulation once a week for three consecutive weeks. The regulations at 43 CFR subpart 2741 addressing requirements and procedures for conveyances under the R&PP Act do not require a public meeting.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including locations under the mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

The lease or conveyance of the land, when issued, will be subject to the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

3. All mineral deposits in the land so patented, and the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations as established by the Secretary of the Interior are reserved to the United States, together with all necessary access and exit rights.

4. Lease or conveyance of the parcel is subject to valid existing rights.

5. An appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or occupations on the leased/patented lands.

6. A limited reversionary provision stating the title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that, without the approval of the Secretary of the Interior or his/her delegate, the patentee or its successor attempts to transfer title to or control over the lands to another, the lands have been devoted to a use other than that for which the lands were conveyed, the lands have not been used for the purpose for which the lands were conveyed for a five-year period, or the patentee has failed to follow the approved development plan or management plan. No portion of the land shall under any circumstance revert to the United States if any such portion has been used for solid waste disposal, or for any other purpose, which may result in the disposal, placement, or release of any hazardous substance.

7. Any other reservations the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Any adverse comments will be reviewed by the BLM Utah State Director or other authorized official of the Department of the Interior who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective on June 14, 2021. The lands will not be offered for lease or conveyance until after the classification becomes effective.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 2741.5)

Abbie Jossie,

Acting State Director.

[FR Doc. 2021–07604 Filed 4–13–21; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6661–E, AA–6661–H, AA–6661–I, AA–6661–A2; 212–LLAK944200–L14100000–HY0000]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of modified decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management hereby provides constructive notice that it will issue an appealable decision modifying its September 9, 2015 decision (''original decision'') which approved lands for conveyance to Eklutna, Inc., pursuant to the Alaska Native Claims Settlement Act of 1971. The original decision will be modified to make changes to public access easements to be reserved to the United States, to navigability information, and to make a technical correction. Notice of the original decision was published in the **Federal Register** on September 9, 2015.

DATES: Any party claiming a property interest in the lands affected by the modifications may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of either or both decisions from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: Christy Favorite, BLM Alaska State Office, at 907–271–5595, or

cfavorit@blm.gov. The BLM Alaska State Office may also be contacted via Telecommunications Device for the Deaf (TDD) through the Federal Relay Service at 1–800–877–8339. The relay service is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is hereby given that the decision approving lands for conveyance to Eklutna, Inc., for the Native village of Eklutna, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA), notice of which was published in the **Federal Register** on September 9, 2015, 80 FR 54319, will be modified in accordance with the Settlement Agreement entered into by and between the State of Alaska, Eklutna, Inc., and the United States on April 11, 2017, as amended on April 22, 2020. The modifications will be made by issuance of a decision setting out the following changes:

1. Adding three (3) easements not listed in the decision of September 9, 2015, to those to be reserved to the United States pursuant to Sec. 17(b) of ANCSA in the subsequent conveyance document;

2. Redescribing four (4) easements listed in the decision of September 9, 2015, to be reserved to the United States pursuant to Sec. 17(b) of ANCSA in the subsequent conveyance document;

3. Updating the navigability language to reflect the Bureau of Land Management's June 2017 determination that the Knik River is navigable; and

4. Making a technical correction to the interests and requirements to which the subsequent conveyance of lands will be made subject.

Notice of the modified decision will also be published once a week, for four consecutive weeks, in the *Anchorage Daily News.*

Any party claiming a property interest in the lands affected by the changes made in the modified decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until May 14, 2021 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Except as modified, the decision of September 9, 2015, notice of which was given on September 9, 2015, is final.

Carolyn Favorite,

Senior Technical Specialist, Division of Lands and Cadastral.

[FR Doc. 2021–07607 Filed 4–13–21; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912000 L18200000.XX0000 LXSS006F0000; MO#4500150877]

Notice of Public Meeting: Sierra Front-Northern Great Basin Resource Advisory Council, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northern Great Basin Resource Advisory Council (RAC), will meet as indicated below. The meeting will be open to the public.

DATES: The meeting will be held on Thursday, July 15, 2021, from 8:00 a.m. to 4:30 p.m. PST, and Friday, July 16, 2021, from 8:00 a.m. to 12 noon PST. However, the meeting could end earlier if discussions and presentations conclude before the scheduled finish time. The meeting will include public comment periods each day. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited.

The meeting will be held in-person and online. If necessary due to public health conditions, the in-person portion of the meetings will be cancelled, and the meeting will take place only online.

ADDRESSES: The July 15–16 meeting will be held at the BLM's Winnemucca District Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada, for those attending face-to-face. The meeting will also be held via the Zoom Webinar Platform. To register for virtual attendance, visit *https://blm.zoomgov.com/s/1606787961?pwd=d1lYUjRETm5Qb0szdURMTWdkYnV0QT09.*

Written Comments may be submitted in advance by email to *lross@blm.gov* with the words ''SFNGB RAC Comment'' in the subject line or sent to the following address 5665 Morgan Mill Road, Carson City, NV 89703, Attention: Lisa Ross, and be received no later than July 14 for the July meeting.

FOR FURTHER INFORMATION CONTACT: Lisa Ross by telephone at (775) 885–6107, or by email at *lross@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Ross during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member RAC provides recommendations to the Secretary of the Interior, through the BLM Nevada State Director, on a variety of planning and management issues associated with public land management in the RAC's area of jurisdiction.

Planned agenda topics include the Southern Nevada Public Land Management Act, Wild Horse & Burro, Recreation, Wildfire Updates/Use of Emergency Stabilization & Rehabilitation Projects/Funds, Grazing, Land Conveyances, Fallon Naval Withdrawal, Energy Projects, and District managers' updates. All RAC meetings are open to the public and will be streamed via the Zoom Webinar Platform. Individuals who plan to attend and need further information about the meetings or need special assistance such as sign language interpretation or other reasonable accommodations may contact Lisa Ross at the phone number or email address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 1784.4–2)

Kenneth Collum,

District Manager, Carson City District.

[FR Doc. 2021–07575 Filed 4–13–21; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–649 and 731–TA–1523 (Final)]

Twist Ties From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of twist ties from China, provided for in subheadings 8309.90.00 and 5609.00.30 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and to be subsidized by the government of China.[2]

Background

The Commission instituted these investigations effective June 26, 2020, following receipt of petitions filed with the Commission and Commerce by Bedford Industries, Inc., Worthington, Minnesota. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of twist ties from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 22, 2020 (85 FR 83613). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through written testimony and video conference on February 16, 2021. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on April 8, 2021. The views of the Commission are contained in USITC Publication 5179 (April 2021), entitled *Twist Ties from China: Investigation Nos. 701–TA–649 and 731–TA–1523 (Final).*

By order of the Commission.

Issued: April 8, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–07581 Filed 4–13–21; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chair Jason E. Kearns and Commissioner David S. Johanson dissenting.

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In the Matter of Certain Televisions, Remote Controls, and Components Thereof, DN 3542;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Roku, Inc. on April 8, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain televisions, remote controls, and components thereof. The complainant names as respondents: Universal Electronics, Inc. of Scottsdale, AZ; Gemstar Technology (Qinzhou) Co. Ltd. of China; Gemstar Technology (Yangzhou) Co. Ltd. of China; C.G. Development Ltd. of China; Universal Electronics BV of Netherlands; UEI Brasil Controles Remotos Ltda. of Brazil; CG México Remote Controls, S. de R.L. de C.V. of Mexico; LG Electronics Inc. of South Korea; LG Electronics USA, Inc. of Englewood Cliffs, NJ; Samsung Electronics Co. Ltd. of South Korea; Samsung Electronics America, Inc. of Ridgefield Park, NJ; Charter Communications, Inc. of Stamford, CT; Charter Communications Holdings, LLC of St. Louis, MO; Spectrum Management Holding Company, LLC of Stamford, CT; Altice USA, Inc. of Long Island City, NY; CSC Holdings, LLC d/b/a Optimum-Cablevision of Long Island City, NY; Cablevision Systems Corp. of Bethpage, NY; Cequel Communications, LLC d/b/a Suddenlink Communications of Long Island City, NY; and Wideopenwest, Inc. of Englewood, CO.

The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the

United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3542'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, [2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: April 9, 2021.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2021–07646 Filed 4–13–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain High-Potency Sweeteners, Processes for Making Same, and Products Containing Same, DN 3543;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Celanese International Corporation, Celanese (Malta) Company 2 Limited and Celanese Sales U.S. Ltd. on April 8, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain high-potency sweeteners, processes for making same, and products containing same. The complainant names as respondents: Anhui Jinhe Industrial Co., Ltd. of China; Jinhe USA LLC of Chicago, IL; Agridient, Inc. of Farmington Hills, MI; Apura Ingredients Inc. of Chino, CA; Crossroad Ingredients of Fairfield, NJ; Hhoya USA Inc. of New York, NY; Ingredis US LLC of Plainsboro, NJ; NiuSource Inc. of Chino, CA; Prinova US LLC of Hanover Park, IL; Prosweetz Ingredients Incorporated d/b/a Panasource Ingredients Inc. of Edison, NJ; Suzhou-Chem Inc. of Wellesley, MA; and UMC Ingredients, LLC fka JRS International LLC of Lyndhurst, NJ. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3543'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: April 9, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–07647 Filed 4–13–21; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1215]

Certain Mobile Electronic Devices and Laptop Computers; Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation Based on Settlement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 15) of the presiding administrative law judge (''ALJ'') granting complainant and respondent's joint motion to terminate the investigation in its entirety based on settlement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On August 24, 2020, the Commission instituted this investigation based on a complaint filed by Maxell, Ltd. (''Maxell'') of Japan. 85 FR 52153–54 (Aug. 24, 2020). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile electronic devices and laptop computers by reason of infringement of certain claims of U.S. Patent Nos. 7,203,517; 8,982,086 (''the '086 patent''); 7,199,821 (''the '821 patent''); 10,129,590 (''the '590 patent''); and 10,176,848 (''the '848 patent''). *Id.* at 52153. The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation named as

respondent Apple Inc. (''Apple'') of Cupertino, California. *Id.* The Office of Unfair Import Investigations (''OUII'') is also named as a party. *Id.*

On February 24, 2021, the Commission determined to terminate the investigation as to the '848 patent based on withdrawal of the allegations in the complaint as to that patent. Order No. 9 (Feb. 9, 2021), *unreviewed by* Comm'n Notice (Feb. 24, 2021). On March 15, 2021, the Commission determined to terminate the investigation as to (i) claims 3 and 5–10 of the '590 patent, (ii) claim 3 of the '086 patent, (iii) all asserted claims of the '590 and '821 patents with respect to Apple's MacOS products only, and (iv) Apple's affirmative defense of lack of standing based on the private parties' withdrawal of their respective allegations in the complaint and answer as to those issues. Order No. 14 (Feb. 19, 2021), *unreviewed by* Comm'n Notice (Mar. 15, 2021).

On March 25, 2021, Maxell and Apple filed a joint motion to terminate the investigation in its entirety based on settlement. That same day, OUII filed a response in support of the motion.

On March 29, 2021, the ALJ issued the subject ID granting the motion. The ID finds that the motion complies with the requirements of Commission Rule 210.21(b) (19 CFR 210.21(b)) and that ''the public interest generally favors settlement to avoid needless litigation and to conserve public resources.'' ID at 2. No petitions for review of the subject ID were filed.

The Commission has determined not to review the subject ID. The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on April 9, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 9, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–07642 Filed 4–13–21; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Evidence Rules; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Evidence Rules; revised notice of open meeting.

SUMMARY: The Advisory Committee on Evidence Rules will hold a virtual meeting on April 30, 2021 starting at 9:30 a.m. (Eastern) rather than 10:00 a.m. The meeting is open to the public. When a meeting is held virtually, members of the public may join by telephone or videoconference to observe but not participate. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.* The announcement for this meeting was previously published in the **Federal Register** on January 22, 2021.

DATES: April 30, 2021, 9:30 a.m.—5 p.m. (Eastern).

FOR FURTHER INFORMATION CONTACT: Julie Wilson, Esq., Acting Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

Authority: 28 U.S.C. 2073.

Dated: April 9, 2021.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2021–07640 Filed 4–13–21; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Judgments Under The Comprehensive Environmental Response, Compensation, and Liability Act

On April 9, 2021, the Department of Justice lodged two proposed Consent Judgments with the United States District Court for the Eastern District of New York in a lawsuit entitled *United States* v. *IMC Eastern Corp. and Island Transportation Corp.,* Civil Action No. 18–3818.

In this action, the United States seeks, as provided under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), recovery of response costs from two parties regarding the New Cassel/Hicksville Groundwater Contamination Superfund Site in the Towns of Hempstead, North Hempstead, and Oyster Bay, in Nassau County, New York (''the Site''). The proposed Consent Judgments resolve the United States' claims against IMC Eastern Corp. and Island Transportation Corp. (the ''Settling Parties'') for past response costs at the Site.

Under the proposed Consent Judgments, the Environmental Protection Agency (''EPA'') will receive $1,000,000 from IMC Eastern Corp. and $687,500 from Island Transportation Corp. The settlements provide, in exchange for the above payments, a covenant not to sue by EPA or to take administrate action against the Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), regarding the Site; 570 Main Street, Westbury, New York (with respect to IMC Eastern Corp.); and 299 Main Street, Westbury, New York (with respect to Island Transportation Corp.).

The proposed Consent Judgments provide each of the two Settling Parties with protection from contribution claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), for the matters addressed by the settlements. The proposed Consent Judgments further request dismissal of all outstanding third- and fourth-party contribution claims filed in *United States* v. *IMC Eastern Corp. and Island Transportation Corp.,* Civil Action No. 18–3818.

The publication of this notice opens a period for public comment on the proposed Consent Judgments. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *IMC Eastern Corp. and Island Transportation Corp.,* Civil Action No. 18–3818, D.J. Ref. No. 90–11–3–11089/1. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Judgments may be examined and downloaded at this

Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide paper copies of the Consent Judgments upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $9.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–07629 Filed 4–13–21; 8:45 am]

BILLING CODE 4410–15–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting: Board of Directors and Its Six Committees

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 86 FR 18558.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Monday, April 19, 2021, commencing at 11:00 a.m., Eastern Daylight Time (EDT); and Tuesday, April 20, 2021, commencing at 1:00 p.m., Eastern Daylight Time (EDT).

CHANGES IN THE MEETING: For the meeting of the Governance and Performance Review Committee, beginning at 11:00 a.m. Eastern Daylight Time (EDT) on Monday, April 19, 2021, LSC is moving one item from the open session agenda to the agenda of the closed session. The item concerns the Committee's consideration of and action on a Resolution to appoint a new General Counsel and Vice President for Legal Affairs.

CONTACT PERSON FOR MORE INFORMATION: Yladrea Drummond, Special Assistant to the President for Board Affairs, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 295–1500; *drummondy@lsc.gov.*

Dated: April 12, 2021.

Stefanie Davis,

Senior Assistant General Counsel.

[FR Doc. 2021–07785 Filed 4–12–21; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 86 FR 17644, April 5, 2021.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: The National Science Board's Committee on Strategy closed teleconference meeting was scheduled for April 8, 2021, from 11 a.m.–12:00 p.m. EDT. This meeting was postponed in FR document 2021–07589, scheduled to be published on April 13, 2021.

CHANGES IN THE MEETING: The new date and time is April 14, 2021, from 3:00–4:00 p.m. EDT.

CONTACT PERSON FOR MORE INFORMATION: Chris Blair, 703/292–7000, *cblair@nsf.gov.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2021–07725 Filed 4–12–21; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Request for Information; Datasets To Conduct Research on Computer and Network Systems

AGENCY: National Science Foundation.

ACTION: Request for information.

SUMMARY: The Division of Computer and Network Systems of the National Science Foundation seeks public input from the research community on the specific needs for datasets to conduct research on computer and network systems.

DATES: Please send comments on or before 5:00 p.m. Eastern time on May 21, 2021. Submit comments via the SurveyMonkey link found in the ''Instructions to Submitters'' below.

ADDRESSES: Email comments to: Dr. Nicholas Goldsmith, AAAS Science & Technology Policy Fellow at *nicgolds@nsf.gov.* Send written submissions to: Division of Computer and Network Systems, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. Submit comments via *https://www.surveymonkey.com/r/RFIDCLSurvey.*

FOR FURTHER INFORMATION CONTACT: Contact Dr. Alex Sprintson, NeTS Program Director at *asprints@nsf.gov* or Dr. Nicholas Goldsmith, AAAS Science & Technology Policy Fellow at *nicgolds@nsf.gov* or call (703)–292–8950.

SUPPLEMENTARY INFORMATION: The ubiquity, structure, and use of communication networks and computing systems have changed dramatically over the last decade. The technology trade-offs that have enabled these networks and systems are becoming increasingly more complex with convergence across computer systems (spanning mobile, edge, fog, and cloud computing, etc.), application accelerators, distributed systems, network stacks, wireless systems, and wired network domains, thereby decreasing the efficacy of traditional model-based approaches. As a result, researchers are increasingly relying on machine learning and other data-intensive techniques to lead the development of next-generation, high-performance networks and computer systems. This necessitates the availability of representative datasets that can inform such research. Furthermore, representative datasets will enable the Networking Technology and Systems (NeTS) and Computer Systems Research (CSR) communities to contribute to innovations in Advanced Wireless and Artificial Intelligence, both of which have been identified as strategic priority areas for the Nation.

Addressing current and future research areas may require access to specific types of datasets that capture a broad range of practical settings and navigate through a complex set of design trade-offs. Researchers utilizing machine learning and other artificial intelligence techniques may need large, labeled data to use as training and testing sets, to test algorithms and protocols that they have developed, or to assess the viability of their design methodologies. More generally, datasets can motivate research questions or identify areas to target in future work. Equitable access to data is also essential for replicable and reproducible research.

Additionally, identification of the specific dataset needs of the research community may motivate the collection of specific new types of data or the creation of new tools for accessing and analyzing data. Existing or future NSF infrastructure investments, such as the Platforms for Advanced Wireless Research (PAWR), may be important venues for collecting the identified data.

This Request for Information (RFI) seeks input from the community on the specific needs related to collecting, sharing, and utilizing public or private datasets for networking and computer systems research, and any challenges associated with each. The input could identify requirements for datasets that may include, but are not limited to, spectrum data, physical layer data, network and internet measurement data, workload data, power/performance data, and other systems data. NSF recognizes that some datasets currently exist but is interested in needs that are not currently met by these existing datasets, conventions or formats that may broaden the usability of the data, and

ways in which additional high-quality datasets may be made available to the research community. NSF is interested in assessing where research progress is slowed due to the lack of datasets that may either already exist or can be generated using existing infrastructure (including NSF-funded infrastructure). NSF may use the responses to this RFI to inform and refine future investments.

Instructions to Submitters

NSF invites individuals and groups of individuals to provide their inputs via the online submission form (link below). The submission form requires the following information:

- Contact person name and affiliation.
- Valid contact email address.
- Additional author name(s) and affiliation(s).
- Research domain(s), discipline(s)/sub-discipline(s) of the author(s), including either NeTS, NeTS–Wireless, or CSR.
- Title of the response.
- Abstract (maximum 200 words) summarizing the response.
- Question 1 (maximum 1000 words)—Data Needed for Research. *State whether or not your research requires datasets. If your research requires datasets, describe whether or not you have access to the needed datasets with sufficient quality; and describe what type of data would address your current need for datasets if it is not being met. NSF is interested in where the lack of datasets and/or the quality of datasets may be holding back research, what datasets would help take research to the next level, and the proportion of researchers that have a need for datasets.*
- Question 2 (maximum 600 words)—Ability to Contribute. *Describe the type of datasets you may be able to contribute to the research community and any barriers to making these datasets available to the research community over at least a seven-year period.*
- Question 3 (maximum 600 words)—Privacy. *Describe the concerns, either as a user and/or a data provider, that you may have in maintaining and ensuring data privacy, in anonymizing data, and in the effects of data anonymization on data quality. Specific ideas to address data privacy and anonymization concerns are also welcome.*
- Question 4 (maximum 600 words)—Format and Metadata. *Describe any suggested formats or standards with which datasets should conform. Describe the types of metadata which should be included with data, as well as particular parameters of concern in the data collection or generation.*
- Question 5 (maximum 600 words)—Other Considerations. *Any other relevant aspects that need to be addressed; or any other issues that NSF should consider, such as where such datasets may exist (e.g. Federal agency, industry, service providers, international partners) and intellectual property concerns.*
- Checkbox to consent to NSF's use and display of the submitted information, consistent with the Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License (*https://creativecommons.org/licenses/by-nc-nd/4.0/legalcode*). *NSF anticipates making submissions publicly accessible through a website.*

To respond to this RFI, please use the official form available at *https://www.surveymonkey.com/r/RFIDCLSurvey.* We recommend writing out your responses in a separate document, and then pasting them into the response fields on the form.

NSF will use the information submitted in response to this RFI at its discretion and will not provide comments to any responder's submission. The information provided will be analyzed, may appear in reports, and may be shared publicly on agency websites. Respondents are advised that the government is under no obligation to acknowledge receipt of the information or provide feedback to respondents with respect to any information submitted. No proprietary, classified, confidential, or sensitive information should be included in your response. The government reserves the right to use any non-proprietary technical information in any resultant solicitation(s), policies, or procedures.

Authority: 42 U.S.C. 1861 et al.

Dated: April 8, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–07585 Filed 4–13–21; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0064]

Environmental Assessments and Findings of No Significant Impact of Independent Spent Fuel Storage Facilities Decommissioning Funding Plans

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing this notice regarding the issuance of a final Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) for its review and approval of the initial and updated decommissioning funding plans (DFPs) submitted by independent spent fuel storage installation (ISFSI) licensees for the ISFSIs listed in the ''Discussion'' section of this document.

DATES: The EA and FONSI referenced in this document are available on April 14, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0064 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0064. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christopher Markley, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6293, email: *Christopher.Markley@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering the approval of the initial and updated DFPs submitted by ISFSI licensees. The NRC staff has prepared a final EA and FONSI determination for each of the initial and updated ISFSI DFPs in accordance with the NRC regulations in Part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' which implement the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

The NRC requires its licensees to plan for the eventual decommissioning of their licensed facilities prior to license termination. On June 17, 2011, the NRC published a final rule in the **Federal Register** amending its decommissioning planning regulations (76 FR 35512). The final rule amended the NRC regulation, 10 CFR 72.30, which concerns financial assurance and decommissioning for ISFSIs. This regulation requires each holder of, or applicant for, a license under 10 CFR part 72 to submit a DFP for the NRC's review and approval. The DFP is to demonstrate the licensee's financial assurance, *i.e.,* that funds will be available to decommission the ISFSI. The NRC staff will later publish its financial analyses of the DFP submittals which will be available for public inspection in ADAMS.

II. Discussion

The following table includes the plant name, docket number, licensee, and ADAMS Accession Number for the final EA and FONSI determination for each of the individual ISFSIs. The table also includes the ADAMS Accession Numbers for other relevant documents, including the initial and updated DFP submittals. For further details with respect to these actions, see the NRC staff's final EA and FONSI determinations which are available for public inspection in ADAMS and at *https://www.regulations.gov* under Docket ID NRC–2021–0064. For additional direction on accessing information related to this document, see the ''ADDRESSES'' section of this document.

FINDING OF NO SIGNIFICANT IMPACT

Facility: Donald C. Cook Nuclear Plant	
Docket No.	72–72.
Licensee	Indiana Michigan Power Company (IMP).
Proposed Action	The NRC's review and approval of IMP's initial and updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).
Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of IMP's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial and updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of IMP's initial and updated DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of the Donald C. Cook Nuclear Plant. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the Donald C. Cook Nuclear Plant ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	Indiana Michigan Power Company, 2012. ISFSI DFPs (10 CFR 72.30), dated December 17, 2012. ADAMS Package Accession No. ML123630254. Indiana Michigan Power Company, Inc., 2015. ISFSI DFPs (10 CFR 72.30), dated December 14, 2015. ADAMS Accession No. ML15351A007. Indiana Michigan Power Company, 2018. Response to Request for Additional Information Regarding ISFSI DFPs (10 CFR 72.30), dated April 11, 2018. ADAMS Accession No. ML18103A035. U.S. Nuclear Regulatory Commission. ESA Section 7 No Effect Determination for ISFSI DFP Reviews (Note to File), dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Request for Additional Information Regarding ISFSI DFPs (10 CFR 72.30), dated February 28, 2018. ADAMS Accession No. ML18060A022. U.S. Nuclear Regulatory Commission. Final EA and FONSI for the Indiana Michigan Power Company's (IMP) Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(b) and (c) for the Donald C. Cook Nuclear Plant Units 1 and 2 ISFSI, dated April 7, 2021. ADAMS Accession No. ML21062A254.
Facility: San Onofre Nuclear Generating Station	
Docket No.	72–41.
Licensee.	Southern California Edison Company (SCE).
Proposed Action	The NRC's review and approval of SCE's initial and updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).

FINDING OF NO SIGNIFICANT IMPACT—Continued

Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of SCE's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), will not authorize or changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial and updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of SCE's DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of the San Onofre Nuclear Generating Station. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the San Onofre Nuclear Generating Station ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	Southern California Edison Company, 2012. ISFSI DFPs (10 CFR 72.30), dated December 14, 2012. ADAMS Accession No. ML130420384. Southern California Edison Company, 2015. ISFSI DFPs (10 CFR 72.30), dated December 14, 2015. ADAMS Accession No. ML15349A942. Southern California Edison Company, 2018. Response to Request for Additional Information Regarding ISFSI DFPs (10 CFR 72.30), dated April 11, 2018. ADAMS Accession No. ML18106A042. U.S. Nuclear Regulatory Commission. ESA Section 7 No Effect Determination for ISFSI DFP Reviews (Note to File), dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Letter to T. J. Palmisano re: Request for Additional Information Regarding Southern California Edison's DFP for San Onofre Nuclear Generating Station ISFSI, dated February 2018. ADAMS Accession No. ML18060A149. U.S. Nuclear Regulatory Commission. Enclosure: Request for Additional Information [Request for Additional Information Regarding Southern California Edison's Decommissioning Funding Plan for San Onofre Nuclear Generating Station ISFSI]. February 2018. ADAMS Accession No. ML18060A148. U.S. Nuclear Regulatory Commission. Final EA and FONSI for the Southern California Edison Company's Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(b) and (c) for the San Onofre Nuclear Generating Station, Units 1, 2, and 3 ISFSI, dated April 7, 2021. ADAMS Accession No. ML21090A115.
Facility: Yankee Nuclear Power Station	
Docket No.	72–31.
Licensee.	Yankee Atomic Electric Company (YEAC).
Proposed Action	The NRC's review and approval of YEAC 's initial and updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).
Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of YEAC 's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), will not authorize or changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial and updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of YEAC's DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of the former Yankee Nuclear Power Station. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the Yankee Rowe ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	Yankee Atomic Electric Company, 2012. ISFSI DFPs (10 CFR 72.30), dated December 17, 2012. ADAMS Accession No. ML12363A106. Yankee Atomic Electric Company, 2015. ISFSI DFPs (10 CFR 72.30), dated December 14, 2015. ADAMS Accession No. ML16020A016. U.S. Nuclear Regulatory Commission. ESA Section 7 No Effect Determination for ISFSI DFP Reviews (Note to File), dated May 15, 2017. ADAMS Accession No. ML17135A062.

FINDING OF NO SIGNIFICANT IMPACT—Continued

	U.S. Nuclear Regulatory Commission. Final EA and FONSI for the Yankee Atomic Electric Company's Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(b) and (c) for the Yankee Rowe ISFSI, dated April 7, 2021. ADAMS Accession No. ML21062A247.

Dated: April 8, 2021.

For the Nuclear Regulatory Commission.

John B. McKirgan,

Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–07577 Filed 4–13–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0076]

Environmental Assessments and Findings of No Significant Impact of Independent Spent Fuel Storage Facilities Decommissioning Funding Plans

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing this notice regarding the issuance of a final Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) for its review and approval of the initial and updated decommissioning funding plans (DFPs) submitted by independent spent fuel storage installation (ISFSI) licensees for the ISFSIs listed in the ''Discussion'' section of this document.

DATES: The EA and FONSI referenced in this document are available on April 14, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0076 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0076. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Yen-Ju Chen, telephone: 301–415–1018, email: *Yen-Ju.Chen@nrc.gov* or Bernard White, telephone: 301–415–6577, email: *Bernard.White@nrc.gov.* Both are staff of the Office of Nuclear Material Safety and Safeguards at the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering the approval of the initial and updated DFPs submitted by ISFSI licensees. The NRC staff has prepared a final EA and FONSI determination for each of the initial and updated ISFSI DFPs in accordance with the NRC regulations in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' which implement the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

The NRC requires its licensees to plan for the eventual decommissioning of their licensed facilities prior to license termination. On June 17, 2011, the NRC published a final rule in the **Federal Register** amending its decommissioning planning regulations (76 FR 35512). The final rule amended the NRC regulation, 10 CFR 72.30, which concerns financial assurance and decommissioning for ISFSIs. This regulation requires each holder of, or applicant for, a license under 10 CFR part 72 to submit a DFP for the NRC's review and approval. The DFP is to demonstrate the licensee's financial assurance, *i.e.,* that funds will be available to decommission the ISFSI. The NRC staff will later publish its financial analyses of the DFP submittals which will be available for public inspection in ADAMS.

II. Discussion

The following table includes the plant name, docket number, licensee, and ADAMS Accession Number for the final EA and FONSI determination for each of the individual ISFSIs. The table also includes the ADAMS Accession Numbers for other relevant documents, including the initial and updated DFP submittals. For further details with respect to these actions, see the NRC staff's Final EA and FONSI determinations which are available for public inspection in ADAMS and at *https://www.regulations.gov* under Docket ID NRC–2021–0076. For additional direction on accessing information related to this document, see the **ADDRESSES** section of this document.

FINDING OF NO SIGNIFICANT IMPACT

Facility: Big Rock Point	
Docket No.	72–43.
Licensee	Entergy Nuclear Operations, Inc. (Entergy).
Proposed Action	The NRC's review and approval of Entergy's initial and updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).

FINDING OF NO SIGNIFICANT IMPACT—Continued

Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of Entergy's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial and updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of Entergy's initial and updated DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of Big Rock Point. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the Big Rock Point ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	Entergy Nuclear Operations, Inc., 2012. ISFSI DFPs (10 CFR 72.30), dated December 13, 2012. ADAMS Accession No. ML12352A126. Entergy Nuclear Operations, Inc., 2013. ISFSI DFPs (10 CFR 72.30)—Correction Notice, dated January 8, 2013. ADAMS Accession No. ML13010A042. Entergy Nuclear Operations, Inc., 2015. ISFSI DFPs (10 CFR 72.30), dated December 17, 2015. ADAMS Accession No. ML15351A524. Entergy Nuclear Operations, Inc., 2018. Response to Request for Additional Information regarding ISFSI DFPs (10 CFR 72.30), dated June 4, 2018. ADAMS Accession No. ML18155A576. U.S. Nuclear Regulatory Commission. EA for Final Rule-Decommissioning Planning, dated February 1, 2009. ADAMS Accession No. ML090500648. U.S. Nuclear Regulatory Commission. Note to File, Re: ESA Section 7 No Effect Determination for ISFSI DFP Reviews, dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Request for Additional Information Regarding Entergy Operations, Inc.'s DFP Update for Big Rock Point, Indian Point Nuclear Generating Stations Units 1, 2, and 3, Pilgrim Nuclear Power Station, Palisades Nuclear Plant, James A. Fitzpatrick Nuclear Power Plant, and Vermont Yankee Nuclear Power Station ISFSIs Docket Nos. 72–43, 72–51, 72–1044, 72–07, 72–12, and 72–59, dated April 5, 2018. ADAMS Accession No. ML18094B093. U.S. Nuclear Regulatory Commission. Final EA and FONSI for the Entergy Nuclear Operations, Inc's Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(b) and (c) for Big Rock Point Nuclear Power Plant ISFSI, dated March 31, 2021. ADAMS Package Accession No. ML21062A269.

Facility: Indian Point Nuclear Generating Stations, Units 1, 2, and 3

Docket No.	72–51.
Licensee	Entergy Nuclear Operations, Inc. (Entergy).
Proposed Action	The NRC's review and approval of Entergy's initial and updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).
Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of Entergy's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial and updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of Entergy's initial and updated DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of Indian Point Nuclear Generating Stations, Units 1, 2, and 3. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the Indian Point ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	Entergy Nuclear Operations, Inc., 2012. ISFSI DFPs (10 CFR 72.30), dated December 13, 2012. ADAMS Accession No. ML12352A126. Entergy Nuclear Operations, Inc., 2013. ISFSI DFPs (10 CFR 72.30)—Correction Notice, dated January 8, 2013. ADAMS Accession No. ML13010A042.

FINDING OF NO SIGNIFICANT IMPACT—Continued

	Entergy Nuclear Operations, Inc., 2015. ISFSI DFPs (10 CFR 72.30), dated December 17, 2015. ADAMS Accession No. ML15351A524. Entergy Nuclear Operations, Inc., 2018. Response to Request for Additional Information regarding ISFSI DFPs (10 CFR 72.30), dated June 4, 2018. ADAMS Accession No. ML18155A576. U.S. Nuclear Regulatory Commission. EA for Final Rule-Decommissioning Planning, dated February 1, 2009. ADAMS Accession No. ML090500648. U.S. Nuclear Regulatory Commission. Note to File, Re: ESA Section 7 No Effect Determination for ISFSI DFP Reviews, dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Request for Additional Information Regarding Entergy Operations, Inc.'s DFP Update for Big Rock Point, Indian Point Nuclear Generating Stations Units 1, 2, and 3, Pilgrim Nuclear Power Station, Palisades Nuclear Plant, James A. Fitzpatrick Nuclear Power Plant, and Vermont Yankee Nuclear Power Station ISFSIs Docket Nos. 72–43, 72–51, 72–1044, 72–07, 72–12, and 72–59, dated April 5, 2018. ADAMS Accession No. ML18094B093. U.S. Nuclear Regulatory Commission. Order Approving Transfer of Licenses and Draft Conforming Administrative License Amendments, dated November 23, 2020. ADAMS Accession No. ML20297A325. U.S. Nuclear Regulatory Commission. Final EA and FONSI for the Entergy Nuclear Operations, Inc's Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(b) and (c) for Indian Point Nuclear Generating Stations, Units 1, 2, and 3 ISFSI, dated April 7, 2021. ADAMS Package Accession No. ML21056A076.
Facility: Pilgrim Nuclear Power Station	
Docket No.	72–1044.
Licensee	Entergy Nuclear Operations, Inc. (Entergy), currently Holtec Pilgrim, LLC, and Holtec Decommissioning International, LLC.
Proposed Action	The NRC's review and approval of Entergy's initial and updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).
Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of Entergy's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial and updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of Entergy's initial and updated DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of Pilgrim Nuclear Power Station. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the Pilgrim ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	Entergy Nuclear Operations, Inc., 2012. ISFSI DFPs (10 CFR 72.30), dated December 13, 2012. ADAMS Accession No. ML12352A126. Entergy Nuclear Operations, Inc., 2013. ISFSI DFPs (10 CFR 72.30)—Correction Notice, dated January 8, 2013. ADAMS Accession No. ML13010A042. Entergy Nuclear Operations, Inc., 2015. ISFSI DFPs (10 CFR 72.30), dated December 17, 2015. ADAMS Accession No. ML15351A524. Entergy Nuclear Operations, Inc., 2018. Response to Request for Additional Information regarding ISFSI DFPs (10 CFR 72.30), dated June 4, 2018. ADAMS Accession No. ML18155A576. U.S. Nuclear Regulatory Commission. EA for Final Rule-Decommissioning Planning, dated February 1, 2009. ADAMS Accession No. ML090500648. U.S. Nuclear Regulatory Commission. Note to File, Re: ESA Section 7 No Effect Determination for ISFSI DFP Reviews, dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Request for Additional Information Regarding Entergy Operations, Inc.'s DFP Update for Big Rock Point, Indian Point Nuclear Generating Stations Units 1, 2, and 3, Pilgrim Nuclear Power Station, Palisades Nuclear Plant, James A. Fitzpatrick Nuclear Power Plant, and Vermont Yankee Nuclear Power Station ISFSIs Docket Nos. 72–43, 72–51, 72–1044, 72–07, 72–12, and 72–59, dated April 5, 2018. ADAMS Accession No. ML18094B093. U.S. Nuclear Regulatory Commission. Order Approving Direct and Indirect Transfer of License and Conforming Amendment, dated August 22, 2019. ADAMS Accession No. ML19170A265.

FINDING OF NO SIGNIFICANT IMPACT—Continued

	U.S. Nuclear Regulatory Commission. Pilgrim Nuclear Power Station-Issuance of Amendment No. 249 Re: Order Approving Direct Transfer of Renewed Facility Operating License and ISFSI General License and Conforming Amendment, dated August 27, 2019. ADAMS Accession No. ML19235A050. U.S. Nuclear Regulatory Commission. Final EA and FONSI for the Entergy Nuclear Operations, Inc's Initial and Updated DFPs Submitted in Accordance With 10 CFR 72.30(b) and (c) for Pilgrim Nuclear Power Station ISFSI, dated March 31, 2021. ADAMS Package Accession No. ML21060B114.
Facility: Palisades Nuclear Plant	
Docket No.	72–07.
Licensee	Entergy Nuclear Operations, Inc. (Entergy).
Proposed Action	The NRC's review and approval of Entergy's initial and updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).
Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of Entergy's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial and updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of Entergy's initial and updated DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of Palisades Nuclear Plant. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the Palisades ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	Entergy Nuclear Operations, Inc., 2012. ISFSI DFPs (10 CFR 72.30), dated December 13, 2012. ADAMS Accession No. ML12352A126. Entergy Nuclear Operations, Inc., 2013. ISFSI DFPs (10 CFR 72.30)—Correction Notice, dated January 8, 2013. ADAMS Accession No. ML13010A042. Entergy Nuclear Operations, Inc., 2015. ISFSI DFPs (10 CFR 72.30), dated December 17, 2015. ADAMS Accession No. ML15351A524. Entergy Nuclear Operations, Inc., 2018. Response to Request for Additional Information regarding ISFSI DFPs (10 CFR 72.30), dated June 4, 2018. ADAMS Accession No. ML18155A576. U.S. Nuclear Regulatory Commission. EA for Final Rule-Decommissioning Planning, dated February 1, 2009. ADAMS Accession No. ML090500648. U.S. Nuclear Regulatory Commission. Note to File, Re: ESA Section 7 No Effect Determination for ISFSI DFP Reviews, dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Request for Additional Information Regarding Entergy Operations, Inc.'s DFP Update for Big Rock Point, Indian Point Nuclear Generating Stations Units 1, 2, and 3, Pilgrim Nuclear Power Station, Palisades Nuclear Plant, James A. Fitzpatrick Nuclear Power Plant, and Vermont Yankee Nuclear Power Station ISFSIs Docket Nos. 72–43, 72–51, 72–1044, 72–07, 72–12, and 72–59, dated April 5, 2018. ADAMS Accession No. ML18094B093. U.S. Nuclear Regulatory Commission. Final EA and FONSI for the Entergy Nuclear Operations, Inc's Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(b) and (c) for Palisades Nuclear Plant ISFSI, dated March 30, 2021. ADAMS Package Accession No. ML21055A528.
Facility: James A. FitzPatrick Nuclear Power Plant	
Docket No	72–12.
Licensee	Entergy Nuclear Operations, Inc. (Entergy), currently Exelon FitzPatrick, LLC.
Proposed Action	The NRC's review and approval of Entergy's initial and updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).
Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of Entergy's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial and updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.

FINDING OF NO SIGNIFICANT IMPACT—Continued

Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of Entergy's initial and updated DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of James A. FitzPatrick Nuclear Power Plant. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the FitzPatrick ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	Entergy Nuclear Operations, Inc., 2012. ISFSI DFPs (10 CFR 72.30), dated December 13, 2012. ADAMS Accession No. ML12352A126. Entergy Nuclear Operations, Inc., 2013. ISFSI DFPs (10 CFR 72.30)—Correction Notice, dated January 8, 2013. ADAMS Accession No. ML13010A042. Entergy Nuclear Operations, Inc., 2015. ISFSI DFPs (10 CFR 72.30), dated December 17, 2015. ADAMS Accession No. ML15351A524. Entergy Nuclear Operations, Inc., 2018. Response to Request for Additional Information regarding ISFSI DFPs (10 CFR 72.30), dated June 4, 2018. ADAMS Accession No. ML18155A576. U.S. Nuclear Regulatory Commission. EA for Final Rule-Decommissioning Planning, dated February 1, 2009. ADAMS Accession No. ML090500648. U.S. Nuclear Regulatory Commission. Note to File, Re: ESA Section 7 No Effect Determination for ISFSI DFP Reviews, dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. James A. Fitzpatrick Nuclear Power Plant-Order Approving Direct Transfer of Renewed Facility Operating License and ISFSI General License and Conforming Amendment, dated March 1, 2017. ADAMS Accession No. ML17041A196. U.S. Nuclear Regulatory Commission. James A. Fitzpatrick Nuclear Power Plant—Issuance of Amendment Re: Application for Order to Transfer Renewed Facility Operating License, ISFSI General License, and Conforming Amendment from Entergy Nuclear Fitzpatrick, LLC. and Entergy Nuclear Operations, Inc., to Exelon Generation Company, LLC, dated March 31, 2017. ADAMS Accession No. ML17082A283. U.S. Nuclear Regulatory Commission. James A. Fitzpatrick Nuclear Power Plant-Order Approving Direct Transfer of Renewed Facility Operating License and ISFSI General License and Conforming Amendment, dated November 7, 2017. ADAMS Accession No. ML17240A069. U.S. Nuclear Regulatory Commission. James A. Fitzpatrick Nuclear Power Plant—Issuance of Amendment Re: Application for Order Approving Direct Transfer of Renewed Facility Operating License and ISFSI General License and Conforming Amendment, dated November 30, 2017. ADAMS Accession No. ML17313A077. U.S. Nuclear Regulatory Commission. Request for Additional Information Regarding Entergy Operations, Inc.'s DFP Update for Big Rock Point, Indian Point Nuclear Generating Stations Units 1, 2, and 3, Pilgrim Nuclear Power Station, Palisades Nuclear Plant, James A. Fitzpatrick Nuclear Power Plant, and Vermont Yankee Nuclear Power Station ISFSIs Docket Nos. 72–43, 72–51, 72–1044, 72–07, 72–12, and 72–59, dated April 5, 2018. ADAMS Accession No. ML18094B093. U.S. Nuclear Regulatory Commission. Final EA and FONSI for the Entergy Nuclear Operations, Inc's Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(b) and (c) for James A. FitzPatrick Nuclear Power Plant ISFSI, dated March 30, 2021. ADAMS Package Accession No. ML21056A543.

Facility: Vermont Yankee Nuclear Power Station

Docket No	72–59.
Licensee	Entergy Nuclear Operations, Inc. (Entergy), currently NorthStar Decommissioning Company, LLC (NorthStar).
Proposed Action	The NRC's review and approval of Entergy's initial and updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).
Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of Entergy's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial and updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.

FINDING OF NO SIGNIFICANT IMPACT—Continued

Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of Entergy's initial and updated DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of Vermont Yankee Nuclear Power Station. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the Vermont Yankee ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	Entergy Nuclear Operations, Inc., 2012. ISFSI DFPs (10 CFR 72.30), dated December 13, 2012. ADAMS Accession No. ML12352A126. Entergy Nuclear Operations, Inc., 2013. ISFSI DFPs (10 CFR 72.30)—Correction Notice, dated January 8, 2013. ADAMS Accession No. ML13010A042. Entergy Nuclear Operations, Inc., 2015. ISFSI DFPs (10 CFR 72.30), dated December 17, 2015. ADAMS Accession No. ML15351A524. Entergy Nuclear Operations, Inc., 2018. Response to Request for Additional Information regarding ISFSI DFPs (10 CFR 72.30), dated June 4, 2018. ADAMS Accession No. ML18155A576. U.S. Nuclear Regulatory Commission. EA for Final Rule-Decommissioning Planning, dated February 1, 2009. ADAMS Accession No. ML090500648. U.S. Nuclear Regulatory Commission. Note to File, Re: ESA Section 7 No Effect Determination for ISFSI DFP Reviews, dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Request for Additional Information Regarding Entergy Operations, Inc.'s DFP Update for Big Rock Point, Indian Point Nuclear Generating Stations Units 1, 2, and 3, Pilgrim Nuclear Power Station, Palisades Nuclear Plant, James A. Fitzpatrick Nuclear Power Plant, and Vermont Yankee Nuclear Power Station ISFSIs Docket Nos. 72–43, 72–51, 72–1044, 72–07, 72–12, and 72–59, dated April 5, 2018. ADAMS Accession No. ML18094B093. U.S. Nuclear Regulatory Commission. Order Approving the Transfer of License and Conforming Amendment, dated October 11, 2018. ADAMS Accession No. ML18248A096. U.S. Nuclear Regulatory Commission. Vermont Yankee Nuclear Power Station—Issuance of Amendment Re: Application for Order Approving Direct and Indirect Transfer of Renewed Facility Operating License and ISFSI General License and Conforming Amendment, dated January 11, 2019. ADAMS Accession No. ML18347B360. U.S. Nuclear Regulatory Commission. Final EA and FONSI for the Entergy Nuclear Operations, Inc's Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(b) and (c) for Vermont Yankee Nuclear Power Station ISFSI, dated March 20, 2021. ADAMS Package Accession No. ML21055A833.

Dated: April 8, 2021.

For the Nuclear Regulatory Commission.

John B. McKirgan,

Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–07582 Filed 4–13–21; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Request for Change to Unreduced Annuity, RI 20–120

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an expiring information collection (ICR) with minor edits, Request for Change to Unreduced Annuity, RI 20–120.

This ICR has been revised in the following manner: The display of the OMB control number and an updated edition date.

DATES: Comments are encouraged and will be accepted until June 14, 2021.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

—Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0245). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 20–120 is designed to collect information the Office of Personnel Management needs to comply with the wishes of the retired Federal employee whose marriage has ended. This form provides an organized way for the retiree to give us everything at one time.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Request for Change to Unreduced Annuity.

OMB Number: 3206–0245.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 5,000.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 2,500 minutes.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2021–07659 Filed 4–13–21; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91510; File No. SR–NYSEAMER–2021–20]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the NYSE American Options Fee Schedule

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 8, 2021, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Options Fee Schedule (''Fee Schedule'') regarding the Professional Step-Up Incentive program. The Exchange proposes to implement the fee change effective April 8, 2021.[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The purpose of this filing is to modify the Fee Schedule regarding the Professional Step-Up Incentive program (the ''Step-Up Incentive'') [5] and correct a typographical error.[6]

The Exchange proposes to implement the rule change on April 8, 2021.

The Exchange has established various pricing incentives designed to encourage increased Electronic volume executed on the Exchange, including (but not limited to) the American Customer Engagement (''ACE'') Program [7] and the Step-Up Incentive. While the ACE Program is limited to Electronic Customer volume, the Step-Up Incentive is limited to Electronic Professional [8] volume. The Exchange proposes to modify certain volume exclusions and qualifying criteria for the Step-Up Incentive to continue to encourage greater Electronic Professional volume and, specifically, to continue to incentivize increased Electronic Professional volume. To the extent that the modifications succeed, the increased liquidity on the Exchange would result in enhanced market quality for all participants.

Currently, the Step-Up Incentive program provides that ATP Holders who increase their monthly Electronic Professional volume by specified percentages of TCADV over their August 2019 volume or, for new ATP Holders, that increase Electronic Professional volume by the specified percentages of TCADV above a base level of 10,000 contracts ADV (the ''Qualifying Volume''), will qualify for certain reduced transaction rates on Electronic Professional volume, as well as credits on Electronic Customer volume at Tier 1 of the ACE program.

The Exchange proposes to modify the Step-Up Incentive program to (1) exclude an additional category of volume from the calculations of base volume amounts and Qualifying Volume, and (2) revise the Qualifying Volume percentages for Tiers A and B.

Currently, volumes from Strategy Executions, CUBE Auctions, and QCC Transactions are excluded from the calculation of base volume amounts and Qualifying Volume. The Exchange proposes to further specify that volume from interest that takes liquidity from posted Customer interest would also be excluded for purposes of calculating base volume amounts and Qualifying Volume for the Step-Up Incentive, as such Customer interest is eligible for discounted rates and credits under other programs set forth in the Exchange's Fee Schedule.[9]

The Step-Up Incentive program includes two tiers that ATP Holders can qualify for based on Qualifying Volume as a percentage of TCADV. The Exchange proposes to increase the qualification for Tier A from 0.12% of TCADV to 0.20% of TCADV and for Tier B from 0.15% of TCADV to 0.25% of TCADV. This proposed change is shown in the table below, with to-be-deleted

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on April 1, 2021 (SR–NYSEAmer–2021–18) and withdrew such filing on April 8, 2021 to make a clarifying change to the proposed Fee Schedule, set forth in the instant filing.

[5] *See* Fee Schedule, Section I.H.

[6] The Exchange proposes a non-substantive change to delete an extraneous word in Section I.H., which would improve the clarity of the Fee Schedule. *See* proposed Fee Schedule, Section I.H.

[7] *See* Fee Schedule, Section I.E.

[8] For purposes of this filing, Electronic ''Professional'' volume includes Electronic volume in the Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, and Firm ranges.

[9] *See, e.g.,* Fee Schedule, Section I.E.

text in brackets and proposed (new) text underscored.[10]

PROFESSIONAL STEP-UP INCENTIVE

	Qualifying volume as a % of TCADV	Per contract penny rate	Per contract non-penny rate	ACE benefits
Tier A	[0.12%] *0.20%*	$0.35	$0.60	Tier 1
Tier B	[0.15%] *0.25%*	0.20	0.50	Tier 1

As shown in the table above, by achieving an increase in Qualifying Volume, benefits accrue to the ATP Holder. For example, assume an ATP Holder executed Electronic Professional volume in August 2019 totaling 9,000 ADV and, in April 2021, the ATP Holder executed Electronic Professional volume of 100,000 ADV and the TCADV is 37,200,000. To qualify for the Step-Up Incentive, that ATP Holder would need to execute Electronic Professional volume that is at least 74,400 contracts (*i.e.,* 0.20% of TCADV) above its August 2019 Electronic Professional Volume for Tier A, as modified, or at least 93,000 contracts (*i.e.,* 0.25% of TCADV) above its August 2019 Electronic Professional Volume for Tier B, as modified. In other words, that ATP Holder would need to attain Electronic Professional volume of 83,400 contracts to qualify for Tier A and 102,000 contracts to qualify for Tier B, and, in this example, would qualify for Tier A but not for Tier B. If an ATP Holder did not have August 2019 volume, it would have to execute the outlined volumes above the 10,000 ADV base level to qualify for Tiers A and B. Such an ATP Holder would need to attain Electronic Professional volume of 84,400 contracts to qualify for Tier A and 103,000 contracts to qualify for Tier B, and, in this example, would likewise qualify for Tier A but not for Tier B.

ATP Holders that qualify for Tier A, as modified, would continue to be charged reduced rates of $0.35 and $0.60 on Electronic Professional executions on Penny and Non-Penny issues, respectively, and would also receive ACE Tier 1 Customer Credits on Customer executions.

ATP Holders that qualify for Tier B, as modified, would continue to be eligible for even further reduced rates of $0.20 and $0.50 on Electronic Professional executions on Penny and Non-Penny issues, respectively, and would also receive ACE Tier 1 Customer Credits on Customer executions. The Exchange also proposes to modify the Fee Schedule to specify that ATP Holders that qualify for Tier B as modified (*i.e.,* ATP Holders that increase Qualifying Volume by 0.25% of TCADV) and also execute posted Professional volume (*i.e.,* that adds liquidity) of at least 0.10% of TCADV would continue to receive a $0.03 per contract discount off the Tier B rates.

The Exchange's fees are constrained by intermarket competition, as ATP Holders may direct their order flow to any of the 16 options exchanges, including an exchange with a similar incentive program.[11] Thus, ATP Holders have a choice of where they direct their order flow. These proposed modifications to the Step-Up Incentive program are designed to continue to encourage ATP Holders to increase the amount of Electronic Professional volume directed to and executed on the Exchange. The Exchange notes that all market participants stand to benefit from increased Electronic Professional volume, which promotes market depth, facilitates tighter spreads, and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange believes that the Step-Up Incentive, as modified, would continue to incent ATP Holders to direct volume to the Exchange even with the exclusion of interest that takes liquidity from posted Customer interest from the calculations of base volume amounts and Qualifying Volume, and even though ATP Holders would have to meet higher volume thresholds to qualify for Tiers A and B. Because both Tiers A and B, as proposed, will continue to offer discounted rates coupled with ACE program Tier 1 credits on certain Customer executions, the Exchange believes the Step-Up Incentive, as modified, should continue to incent the consistent and concerted redirection of order flow to the Exchange by ATP Holders in exchange for better economics as provided by the incentive program (*i.e.,* enhanced discounts and credits), making it a more attractive venue for trading.

The Exchange cannot predict with certainty whether any ATP Holders would be incented to qualify for the Step-Up Incentive, as modified; however, the Exchange believes that ATP Holders would continue to be encouraged to direct Electronic Professional volume to the Exchange to qualify for the Step-Up Incentive.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based

[10] *See also* proposed Fee Schedule, Section I.H.

[11] *See, e.g.,* MIAX Options (''MIAX'') Fee Schedule, Section 1.a.iv, Professional Rebate Program, *available at: https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_01_13_21.pdf* (setting forth incentive program that, like the Step-Up Incentive, provides a discounted net rate on Professional (as defined by the MIAX program) electronic volume, provided the Member achieves certain Professional volume increase percentage thresholds in the month relative to the fourth quarter of 2015).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[15] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in February 2021, the Exchange had less than 10% market share of executed volume of multiply-listed equity and ETF options trades.[16]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed modifications to the Step-Up Incentive are reasonable because they are designed to continue to incent ATP Holders to increase the amount of Electronic Professional order flow directed to the Exchange. The Exchange believes that, even though the proposed changes to the Step-Up Incentive program would exclude an additional category of volume from the calculation of base volume and Qualifying Volume, as well as increase the threshold volume to qualify for Tiers A and B, ATP Holders will still be incentivized to direct order flow to the Exchange in exchange for better economics as provided by the incentive program (*i.e.,* enhanced discounts and credits). The Exchange also notes that all market participants stand to benefit from increased Electronic Professional volume, as such increase promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants that do not participate in (or qualify for) the Step-Up Incentive program.

Finally, to the extent the proposed modifications attract greater volume and liquidity, the Exchange believes the proposed changes would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants, and continue to attract Electronic Professional volume to the Exchange even though the proposed changes would raise the qualification thresholds for the Step-Up Incentive. In the backdrop of the competitive environment in which the Exchange operates, the proposed changes are a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The proposed changes are designed to incent ATP Holders to direct liquidity to the Exchange in Electronic Professional executions, similar to another exchange program offering incentives on professional volume,[17] thereby promoting market depth, price discovery and improvement and enhancing order execution opportunities for market participants.

The Proposed Rule Change is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposed change is based on the amount and type of business transacted on the Exchange, and ATP Holders can opt to avail themselves of the Step-Up Incentive program or not. Moreover, even though the proposed changes would exclude additional volume from the calculation of base volume and Qualifying Volume, as well as increase the threshold volume to qualify for the Step-Up Incentive, the Exchange believes they are designed to encourage ATP Holders to aggregate their executions—particularly Electronic Professional—at the Exchange as a primary execution venue. To the extent that the proposed changes attract more Electronic Professional volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule changes would continue to improve market quality for all market participants on the Exchange and, as a consequence, continue to attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the proposed modifications would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposed changes are based on the amount and type of business transacted on the Exchange and ATP Holders are not obligated to participate in the Step-Up Incentive program. Rather, the proposed changes are designed to continue to encourage ATP Holders to utilize the Exchange as a primary trading venue (if they have not done so previously) or increase Electronic Professional volume sent to the Exchange. To the extent that the proposed changes attract more executions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule changes would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery, even though they exclude an additional category of volume from the calculation of base volume and Qualifying Volume and increase the threshold volume to qualify for the Step-Up Incentive. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in

[15] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/market-data/volume/default.jsp.*

[16] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in multiply-listed equity and ETF options increased slightly from 8.42% for the month of February 2020 to 8.86% for the month of February 2021.

[17] *See, e.g., supra* note 11 (regarding MIAX Professional Rebate Program).

adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [18]

Intramarket Competition. The proposed changes are designed to attract additional order flow (particularly Electronic Professional volume) to the Exchange. The Exchange believes that the proposed modifications to the Step-Up Incentive would continue to incent market participants to direct additional volume to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased Electronic Professional volume would increase opportunities for execution of other trading interest. The proposed modifications to the calculation of base volume amounts and Qualifying Volume and to the qualification bases for Tiers A and B of the Step-Up Incentive would apply to all ATP Holders that execute Electronic Professional volume, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[19] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in February 2021, the Exchange had less than 10% market share of executed volume of multiply-listed equity and ETF options trades.[20]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to encourage ATP Holders to direct trading interest (and, in particular, Electronic Professional volume) to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar pricing incentives, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [21] of the Act and subparagraph (f)(2) of Rule 19b–4 [22] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2021–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2021–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2021–20, and should be submitted on or before May 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07596 Filed 4–13–21; 8:45 am]

BILLING CODE 8011–01–P

[18] *See* Reg NMS Adopting Release, *supra* note 14, at 37499.

[19] *See supra* note 15.

[20] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in multiply-listed equity and ETF options increased slightly from 8.42% for the month of February 2020 to 8.86% for the month of February 2021.

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(2).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91514; File No. SR–NYSEArca–2021–23]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change List and Trade Shares of the: Fidelity Women's Leadership ETF and Fidelity Sustainability U.S. Equity ETF

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 6, 2021, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Rule 8.601–E: Fidelity Women's Leadership ETF and Fidelity Sustainability U.S. Equity ETF. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted NYSE Arca Rule 8.601–E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (''UTP''), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.[3] Commentary .01 to Rule 8.601–E requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade shares (''Shares'') of Active Proxy Portfolio Shares of the Fidelity Women's Leadership ETF and Fidelity Sustainability U.S. Equity ETF (each a ''Fund'' and, collectively, the ''Funds'') under Rule 8.601–E.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600–E[4] and for which a ''Disclosed Portfolio'' is required to be disseminated at least once daily,[5] the portfolio for an issue of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the Investment Company Act of 1940 (the ''1940 Act'').[6] The composition of the portfolio of an issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio and/or cash with a value equal to the next-determined NAV. A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR–NYSEArca–2019–95). Rule 8.601–E(c)(1) provides that ''[t]he term ''Active Proxy Portfolio Share'' means a security that (a) is issued by a investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (''NAV''); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.'' Rule 8.601–E(c)(2) provides that ''[t]he term ''Actual Portfolio'' means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company's calculation of NAV at the end of the business day.'' Rule 8.601–E(c)(3) provides that ''[t]he term ''Proxy Portfolio'' means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.''

[4] The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600–E. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR–NYSEArca–2015–110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

[5] NYSE Arca Rule 8.600–E(c)(2) defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600–E(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

[6] A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N–CSR under the 1940 Act. Information reported on Form N–PORT for the third month of a fund's fiscal quarter will be made publicly available 60 days after the end of a fund's fiscal quarter. Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a series of Active Proxy Portfolio Shares' Statement of Additional Information (''SAI''), its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A series of Active Proxy Portfolio Shares' SAI and Shareholder Reports will be available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.

The Commission has previously approved listing and trading on the Exchange of series of Active Proxy Portfolio Shares under NYSE Arca Rule 8.601–E.[7]

The Shares of the Fund will be issued by the Fidelity Covington Trust (the ''Trust''), which is organized as a business trust under the laws of the Commonwealth of Massachusetts and registered with the Commission as an open-end management investment company.[8] Fidelity Management & Research Company LLC (the ''Adviser'') will be the investment adviser to the Funds. FMR Investment Management (UK) Limited, Fidelity Management & Research (Hong Kong) Limited, and Fidelity Management & Research (Japan) Limited will be the sub-advisers (each a ''Sub-Adviser'' and, collectively, the ''Sub-Advisers'') for the Funds. State Street Bank and Trust Company will serve as the Funds' custodian and transfer agent. Fidelity Distributors Company LLC will act as the distributor (the ''Distributor'') for the Funds.

Commentary .04 to NYSE Arca Rule 8.601–E provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Actual Portfolio and/or Proxy Portfolio or has access to non-public information regarding the Investment Company's Actual Portfolio and/or Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and/or Proxy Portfolio or changes thereto. Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2–E(j)(3); however, Commentary .04, in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer, reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.[9] Commentary .04 is also similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that Commentary .04 relates to establishment and maintenance of a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, applicable to an Investment Company's Actual Portfolio and/or Proxy Portfolio or changes thereto, and not just to the underlying portfolio, as is the case with Managed Fund Shares.

In addition, Commentary .05 to Rule 8.601–E provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

The Adviser and Sub-Advisers are not registered as broker-dealers but are affiliated with broker-dealers. The Adviser and Sub-Advisers have implemented and will maintain a ''fire wall'' with respect to such broker-dealer affiliates regarding access to information concerning the composition of and/or changes to each Fund's Actual Portfolio and/or Proxy Portfolio.

In the event (a) the Adviser and/or a Sub-Adviser becomes registered as a

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[7] *See* Securities Exchange Act Release Nos. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR–NYSEArca–2019–95) (Notice of Filing of Amendment No. 6 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 6, to Adopt NYSE Arca Rule 8.601–E to Permit the Listing and Trading of Active Proxy Portfolio Shares and To List and Trade Shares of the Natixis U.S. Equity Opportunities ETF Under Proposed NYSE Arca Rule 8.601–E) (''Natixis Order''); 89192 (June 30, 2020), 85 FR 40699 (July 7, 2020) (SR–NYSEArca–2019–96) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to List and Trade Two Series of Active Proxy Portfolio Shares Issued by the American Century ETF Trust under NYSE Arca Rule 8.601–E) (''American Century Order''); 89191 (June 30, 2020), 85 FR 40358 (July 6, 2020) (SR–NYSEArca–2019–92) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Four Series of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. under NYSE Arca Rule 8.601–E) (''T. Rowe Price Approval Order''); 89438 (July 31, 2020), 85 FR 47821 (August 6, 2020) (SR–NYSEArca–2020–51) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF under NYSE Arca Rule 8.601–E). *See also* Securities Exchange Act Release Nos. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR–CboeBZX–2019–107) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to Adopt Rule 14.11(m), Tracking Fund Shares, and to List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF); 90530 (November 30, 2020), 85 FR 78366 (December 4, 2020) (SR–CboeBZX–2020–085) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to List and Trade Shares of the Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, and Fidelity Small-Mid Cap Opportunities ETF Under Rule 14.11(m) (Tracking Fund Shares)).

[8] The Trust is registered under the 1940 Act. On March 26, 2021, the Trust filed a registration statement on Form N–1A under the 1940 Act relating to the Funds (File No. 811–07319) (the ''Registration Statement''). Fidelity Beach Street Trust, Fidelity Management & Research Company, FMR Co., Inc., and Fidelity Distributors Corporation filed a ninth amended application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–14364), dated November 8, 2019 (the ''Application''). On December 10, 2019, the Commission issued an order (the ''Exemptive Order'') under the 1940 Act granting the relief sought in the Application (Investment Company Act Release No. 33712, December 10, 2019). The Funds are subject to the relief set forth in the Exemptive Order because Fidelity Management & Research Company will serve as the investment adviser to the Funds, and investments made by the Funds will comply with the conditions set forth in the Application and the Exemptive Order. The description of the operation of the Funds herein is based, in part, on the Registration Statement and the Application. The Exchange will not commence trading in Shares of the Funds until the Registration Statement is effective.

[9] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Advisers and their related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a ''fire wall'' with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to each Fund's Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding each Fund's Actual Portfolio and/or Proxy Portfolio or changes thereto. Any person related to the Adviser, Sub-Adviser(s), or the Funds who makes decisions pertaining to a Fund's Actual Portfolio or the Proxy Portfolio or has access to non-public information regarding a Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto.

In addition, any person or entity, including any service provider for the Funds, who has access to non-public information regarding a Fund's Actual Portfolio or the Proxy Portfolio or changes thereto, will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to a Fund's Actual Portfolio and/or Proxy Portfolio.

Description of the Funds

According to the Registration Statement, the Adviser will identify a ''Tracking Basket'' [10] for each Fund. The Tracking Basket for each Fund is designed to closely track the daily performance of the Fund but is not the Fund's Actual Portfolio. The Tracking Basket is comprised of (1) select recently disclosed portfolio holdings (''Strategy Components''); (2) liquid ETFs that convey information about the types of instruments in which the fund invests that are not otherwise fully represented by Strategy Components (''Representative ETFs''); and (3) cash and cash equivalents. Representative ETFs will be selected for inclusion in the Tracking Basket such that, when aggregated with the other Tracking Basket components, the Tracking Basket corresponds to a Fund's overall holdings exposure. Each Fund will publish on its website a Tracking Basket for the Fund before the commencement of trading of the Fund's Shares on each ''Business Day,'' [11] and the Adviser will not make intra-day changes to the Tracking Basket except to correct errors in the published Tracking Basket.

In addition, on each Business Day, before commencement of trading of Shares, each Fund will publish on its website the ''Tracking Basket Weight Overlap,'' which is the percentage weight overlap between the holdings of the prior Business Day's Tracking Basket compared to the holdings of the Fund that formed the basis for each Fund's calculation of NAV at the end of the prior Business Day. The Tracking Basket Weight Overlap is calculated by taking the lesser weight of each asset held in common between a Fund's Actual Portfolio and the Tracking Basket and adding the totals. The Tracking Basket Weight Overlap is designed to provide investors with an understanding of how similar the Tracking Basket is to a Fund's Actual Portfolio in percentage terms.

Fidelity Women's Leadership ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.[12] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund's investment objective is to seek long-term growth of capital. The Fund will normally invest at least 80% of its assets in equity securities of companies that the Adviser believes prioritizes and advances women's leadership and development. The Fund will generally invest in larger-sized companies but may also make substantial investments in securities issued by medium and smaller companies. The Fund may invest up to 25% of its assets in a single company.

Fidelity Sustainability U.S. Equity ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.[13] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund's investment objective is to seek long-term growth of capital. The Fund will primarily invest in equity securities and will normally invest at least 80% of its assets in equity securities of U.S. companies that the Adviser believes have proven or improving sustainability practices, based on an evaluation of such companies' ESG profile. The Fund may also invest in companies that the Adviser believes deliver environmental or social impact through core business operations. The Fund may hold securities of large, medium, and/or small capitalization companies. The Fund may invest up to 25% of its assets in a single company.

Investment Restrictions

The Shares of the Funds will conform to the initial and continued listing criteria under Rule 8.601–E. The Funds' holdings will be limited to and consistent with permissible holdings as described in the Application and Exemptive Order and all requirements in the Application and Exemptive Order.[14]

[10] The ''Tracking Basket'' is the Proxy Portfolio for purposes of Rule 8.601–E(c)(3).

[11] ''Business Day'' is defined to mean any day that the Exchange is open, including any day when the Funds satisfy redemption requests as required by Section 22(e) of the 1940 Act.

[12] Pursuant to the Application and Exemptive Order, the permissible investments for the Funds include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares (''foreign common stocks''), exchange-traded preferred stocks, exchange-traded American Depositary Receipts (''ADRs''), exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Funds will be listed on a U.S. national securities exchange. For purposes of this filing, cash equivalents are short-term U.S. Treasury securities, government money market funds, and repurchase agreements. The Funds will not short positions, will not borrow for investment purposes, and will not purchase any securities that are illiquid investments at the time of purchase.

[13] *Id.*

[14] *Id.*

The Funds' investments, including derivatives, will be consistent with their investment objectives and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Funds' investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of the Funds' primary broad-based securities benchmark index (as defined in Form N–1A).[15]

Creations and Redemptions of Shares

According to the Registration Statement, the Trust will issue and sell Shares of the Funds only in specified minimum size ''Creation Units'' on a continuous basis through the Distributor at their NAV next determined after receipt of an order, on any Business Day, in proper form. The NAV of each Fund's Shares will be calculated each Business Day as of the close of regular trading on the Exchange, ordinarily 4:00 p.m. Eastern Time (''E.T.''). A Creation Unit will generally consist of at least 25,000 Shares.

According to the Registration Statement, Shares of the Funds will be purchased and redeemed in Creation Units and generally on an in-kind basis in exchange for the Strategy Components included in a Fund's Tracking Basket, together with an amount of cash corresponding to the value of the Representative ETFs and cash and cash equivalents that form the remainder of the Tracking Basket. Accordingly, except where the purchase or redemption will include cash, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments''). The composition of the instruments that constitute the Deposit Instruments and the Redemption Instruments for each Fund (collectively, the ''Creation Basket'') will be the same as a Fund's Tracking Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis.

Creation Units of the Funds may be purchased and/or redeemed entirely for cash. When full or partial cash purchases of Creation Units are available or specified for the Funds, they will be effected in essentially the same manner as in-kind purchases thereof. The Funds may determine, upon receiving a purchase or redemption order from an Authorized Participant, to have the purchase or redemption, as applicable, be made entirely or in part in cash.[16]

If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

Each Fund will make available on each Business Day, immediately prior to the opening of business on the Exchange (9:30 a.m. E.T.), the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Tracking Basket will be published each Business Day regardless of whether a Fund decides to issue or redeem Creation Units entirely or in part on a cash basis.

All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant. Conforming orders to purchase or redeem Creation Units will generally be accepted until the closing time of regular trading hours on the Exchange (ordinarily 4:00 p.m. E.T.) (the ''Closing Time''). The date on which an order to purchase or redeem Creation Units is received and accepted is referred to as the ''Transmittal Date.'' All conforming Creation Unit orders must be received by the Distributor no later than the Closing Time in order to receive the NAV determined on the Transmittal Date. When the Exchange closes earlier than normal, a Fund may require orders for Creation Units to be placed earlier in the Business Day.

Availability of Information

The Funds' website (*www.fidelity.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The Funds' website will include on a daily basis, per Share for each Fund, the prior Business Day's NAV and the ''Closing Price'' or ''Bid/Ask Price,'' [17] and a calculation of the premium/discount of the Closing Price or Bid/Ask Price against such NAV.[18] The Adviser has represented that the Funds' website will also provide: (1) Any other information regarding premiums/discounts as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended, and (2) any information regarding the bid/ask spread for each Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. The Funds' website also will disclose the information required under Rule 8.601–E(c)(3).[19] The website and information will be publicly available at no charge.

The identity and quantity of investments in the Tracking Basket will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day. The website will also include information relating to the Tracking Basket Weight Overlap, as discussed above.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in the Funds' Commission filings will be provided on the Funds' website on a current basis.[20] Thus, each Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis, and no less than 60 days after the end of every fiscal quarter.

Investors can also obtain the Funds' SAI, Shareholder Reports, Form N–CSR, N–PORT, and Form N–CEN. The prospectus, SAI, and Shareholder Reports are available free upon request, and those documents and the Form N–CSR, N–PORT, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website. The

[15] The Funds' broad-based securities benchmark index will be identified in a future amendment to its Registration Statement following the Funds' first full calendar year of performance.

[16] The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash on any given day, such transactions will be effected in the same manner for all Authorized Participants placing trades with the Funds on that day.

[17] The records relating to Bid/Ask Prices will be retained by the Funds or their service providers. The ''Bid/Ask Price'' is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of each Fund's NAV. The ''National Best Bid and Offer'' is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor. The ''Closing Price'' of Shares is the official closing price of the Shares on the Exchange.

[18] The ''premium/discount'' refers to the premium or discount to the NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price or the Closing Price on a given trading day.

[19] *See* note 5, *supra.* Rule 8.601–E (c)(3) provides that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the 1940 Act applicable to such series, including the following, to the extent applicable: (i) Ticker symbol; (ii) CUSIP or other identifier; (iii) Description of holding; (iv) Quantity of each security or other asset held; and (v) Percentage weighting of the holding in the portfolio.

[20] *See* note 6, *supra.*

Exchange also notes that pursuant to the Application, the Funds must comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information.

Information regarding the market price of Shares and trading volume in Shares, will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the Consolidated Tape Association (''CTA'') high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.[21] Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of a Fund will be halted.

Specifically, Rule 8.601–E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If the Exchange becomes aware that the NAV, Proxy Portfolio, or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio, or Actual Portfolio is available to all market participants at the same time.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in all trading sessions in accordance with NYSE Arca Rule 7.34–E(a). As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange. The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601–E. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

Pursuant to Rule 8.601–E(d)(1)(B), the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the Trust that the NAV per Share of each Fund will be calculated daily and that the NAV, Proxy Portfolio, and the Actual Portfolio for each Fund will be made available to all market participants at the same time.

With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and the Financial Industry Regulatory Authority, Inc. (''FINRA'') will continue to monitor Exchange members for compliance with such requirements.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[22] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[23]

The Adviser will make available daily to FINRA and the Exchange the Actual Portfolio of each Fund, upon request, in order to facilitate the performance of the surveillances referred to above.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares.

[21] *See* NYSE Arca Rule 7.12–E.

[22] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[23] For a list of the current members of ISG, *see www.isgportal.org.*

The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of Rule 8.601–E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of a series of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601–E. The Exchange notes that Commentary .01 to Rule 8.601–E requires an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601–E. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601–E.

With respect to the Funds, all statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The Exchange will obtain a representation from the Trust, prior to commencement of trading in the Shares of the Funds, that it will advise the Exchange of any failure by the Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Section 6(b)(5) of the Act,[25] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[26]

With respect to the proposed listing and trading of Shares of the Funds, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.601–E.

The Funds' holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.[27]

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by the Funds will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The daily dissemination of the identity and quantity of Tracking Basket component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the Shares' Bid/Ask Price and NAV.

The Funds' investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Funds' investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of the Funds' primary broad-based securities benchmark index (as defined in Form N–1A).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Trust that the NAV per Share of each Fund will be calculated daily and that the NAV, Tracking Basket, and Actual Portfolio for the Funds will be made available to all market participants at the same time. Investors can obtain the Funds' SAI, shareholder reports, and its Form N–CSR, Form N–PORT, and Form N–CEN. The Funds' SAI and shareholder reports will be available free upon request from the Funds, and those documents and the Form N–CSR, Form N–PORT, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website.

Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares. With respect to the Funds, the Adviser will make available daily to FINRA and the Exchange the portfolio holdings of each Fund upon request in order to facilitate the performance of the surveillances referred to above.

The Exchange will utilize its existing procedures to monitor compliance with the requirements of Rule 8.601–E. For

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] The Exchange represents that, for initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Rule 5.3–E.

[27] *See* note 12, *supra.*

example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the Trust, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601–E. The Exchange notes that Commentary .01 to Rule 8.601–E requires the issuer of Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601–E. In addition, the Exchange will require the issuer to represent that it will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601–E.

In addition, with respect to the Funds, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the CTA high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

The website for the Funds will include a form of the prospectus that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of a Fund will be halted. In addition, as noted above, investors will have ready access to each Fund's Tracking Basket and quotation and last sale information for the Shares. The identity and quantity of investments in each Fund's Tracking Basket will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day. The Shares will conform to the initial and continued listing criteria under Rule 8.601–E.[28]

The Funds' holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.[29] Any foreign common stocks held by the Funds will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The components of each Fund's Actual Portfolio will (a) be listed on an exchange and the primary trading session of such exchange will trade synchronously with the Exchange's Core Trading Session, as defined in Rule 7.34–E(a); (b) with respect to exchange-traded futures, be listed on a U.S. futures exchange; or (c) consist of cash and cash equivalents.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange will obtain a representation from the Adviser, prior to commencement of trading in the Shares of the Funds, that it will advise the Exchange of any failure by the Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Funds are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding quotation and last sale information for the Shares.

[28] *See* note 3, *supra.*

[29] *See* note 12, *supra.*

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of additional actively-managed ETFs that have characteristics different from existing actively-managed and index ETFs and would introduce additional competition among various ETF products to the benefit of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[30] and Rule 19b–4(f)(6) thereunder.[31]

A proposed rule change filed under Rule 19b–4(f)(6)[32] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[33] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the Commission has previously approved proposed rule changes to permit listing and trading on the Exchange of Active Proxy Portfolio Shares similar to the Funds.[34] The Exchange also states that the Commission has previously issued a

[30] 15 U.S.C. 78s(b)(3)(A)(iii).

[31] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6)(iii).

[34] *See* note 7, *supra.*

notice of filing and immediate effectiveness for a proposed rule change relating to the proposed listing on a national securities exchange of other issues of Active Proxy Portfolio Shares, and that the Funds will operate in a manner similar to such funds.[35] For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[36]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2021–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2021–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2021–23 and should be submitted on or before May 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07597 Filed 4–13–21; 8:45 am]

BILLING CODE 8011–01–P

[35] *See* Securities Exchange Act Release No. 90530 (November 30, 2020), 85 FR 78366 (December 4, 2020) (SR–CboeBZX–2020–085) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to List and Trade Shares of the Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, and Fidelity Small-Mid Cap Opportunities ETF Under Rule 14.11(m) (Tracking Fund Shares))

[36] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91516; File No. SR–ICC–2021–010)]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the ICC Clearing Rules

April 8, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 2, 2021, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICC. ICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(3) thereunder,[4] such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(3).

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICC Clearing Rules (the ''Rules'') with respect to the description of ICE US Holding Company L.P.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes minor revisions to the Rules to update the description of ICE US Holding Company L.P. (the ''Partnership''). ICC is wholly owned by the Partnership. Specifically, ICC proposes to amend ICC Rule 503(a)(iii) in connection with a change in the jurisdiction of legal organization of the Partnership from the Cayman Islands to Delaware (the ''Domestication''). Under ICC Rule 503(a)(iii), the Partnership appoints three members of the ICC Risk Committee, consisting of an independent ICC Board member and two ICC officers. In referencing the Partnership, ICC Rule 503(a)(iii) describes the Partnership as a ''Cayman Islands exempted limited partnership.'' In light of the Domestication, ICC proposes to describe the Partnership as a ''Delaware limited partnership.'' Such amendment would not otherwise change the substance of ICC Rule 503(a)(iii) nor would it affect the rights, functions, or obligations of the Partnership in relation to ICC. ICC has

filed the proposed rule change for immediate effectiveness and proposes to make such changes effective, subject to any regulatory review or approval process.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [5] and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad–22.[6] In particular, Section 17A(b)(3)(F) of the Act [7] requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest. ICC proposes minor revisions to the Rules to update the description of the Partnership to a ''Delaware limited partnership'' given the Domestication. Such amendment would not otherwise change the substance of ICC Rule 503(a)(iii) nor would it affect the rights, functions, or obligations of the Partnership in relation to ICC. The proposed rule change would ensure that the ICC Rules remain up-to-date and transparent to promote ICC's ability to continue to maintain clear and comprehensive rules and procedures that provide sufficient information to market participants. The proposed rule change is therefore consistent with the prompt and accurate clearing and settlement of the contracts cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[8]

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad–22.[9] Rule 17Ad–22(e)(1) [10] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. As discussed above, the proposed revisions update the jurisdiction of legal organization of the Partnership in Rule 503(a)(iii) in light of the Domestication. Such amendment ensures that the ICC Rules continue to be up-to-date, clear, and transparent and does not otherwise change the substance of ICC Rule 503(a)(iii) nor affect the rights, functions, or obligations of the Partnership in relation to ICC. The ICC Rules would thus continue to provide for a well-founded, clear, transparent, and enforceable legal basis for ICC's activities, consistent with the requirements of the Rule 17Ad–22(e)(1).[11]

Rule 17Ad–22(e)(2)(i) and (v) [12] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. The proposed rule change will not impact the substance of Rule 503(a)(iii), under which the Partnership will continue to appoint three members of the ICC Risk Committee, consisting of an independent ICC Board member and two ICC officers. ICC's governance arrangements continue to be clear and transparent, such that information relating to the assignment of responsibilities and the requisite involvement of relevant stakeholders is clearly detailed in the ICC Rules and policies and procedures, consistent with the requirements of Rule 17Ad–22(e)(2)(i) and (v).[13]

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes to the ICC Rules will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and paragraph (f) of Rule 19b–4 [15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2021–010 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2021–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for

[5] 15 U.S.C. 78q–1.
[6] 17 CFR 240.17Ad–22.
[7] 15 U.S.C. 78q–1(b)(3)(F).
[8] *Id.*
[9] 17 CFR 240.17Ad–22.
[10] 17 CFR 240.17Ad–22(e)(1).
[11] *Id.*
[12] 17 CFR 240.17Ad–22(e)(2)(i) and (v).
[13] *Id.*
[14] 15 U.S.C. 78s(b)(3)(A).
[15] 17 CFR 240.19b–4(f)(3).

inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2021–010 and should be submitted on or before May 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07599 Filed 4–13–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91518; File No. SR–MIAX–2021–08]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 404A, Select Provisions of Options Listing Procedures Plan

April 8, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 26, 2021, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 404A, Select Provisions of Options Listing Procedures Plan.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 404A, Select Provisions of Options Listing Procedures Plan, to make a minor non-substantive change to update a Uniform Resource Locator (''URL'') to point to the complete copy of the current Options Listings Procedures Plan (''OLPP'') on the Options Clearing Corporation (''OCC'') website.

Currently, Exchange Rule 404A provides that, the provisions set forth in this Rule 404A were adopted by the Exchange as a quote mitigation strategy and are codified in the Options Listing Procedures Plan (''OLPP''). The current rule provides an invalid link to the OLPP, stating that, A complete copy of the current OLPP may be accessed at: *http://www.optionsclearing.com/components/docs/clearing/services/options_listing_procedures_plan.pdf.*

The Exchange notes that the current copy of the OLPP is no longer located at this URL and instead may be found at *https://www.theocc.com/Clearance-and-Settlement/Industry-Services.* Therefore, the Exchange proposes to remove the old invalid URL and replace it with the current valid URL.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(b)(5) of the Act[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with to, and facilitating transaction in securities. Further, the proposed rule change promotes the protection of investors and the public interest by providing an accurate URL to where the public and investors may find the current and complete copy of the OLPP. It is in the public and investors interest for Exchange rules to be accurate and concise so as to avoid the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will not impose any burden on intra-market competition as every Member of the Exchange benefits from the location of the OLPP being corrected in the Exchange's rulebook. Additionally, the proposed rule change is similar to the rules of other exchanges.[5]

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition as the proposed change is not a competitive filing and is being made solely to correct an inaccurate URL.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] *See* Nasdaq ISE Options 4, Section 6; and Cboe Exchange Rule 4.7(a).

Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)[7] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2021–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2021–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2021–08 and should be submitted on or before May 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07601 Filed 4–13–21; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91504; File No. 4–757]

Joint Industry Plan; Notice of Designation of a Longer Period for Commission Action on a Proposed National Market System Plan Regarding Consolidated Equity Market Data

April 8, 2021.

On August 11, 2020, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Investors Exchange LLC, Long Term Stock Exchange, Inc., MEMX LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX LLC, Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., NYSE National, Inc., and Financial Industry Regulatory Authority, Inc. filed with the Securities and Exchange Commission (''Commission'') a proposed new single national market system plan governing the public dissemination of real-time consolidated equity market data for national market system stocks (the ''CT Plan''). The proposed CT Plan was published for comment in the **Federal Register** on October 13, 2020.[1]

On January 11, 2021, the Commission instituted proceedings to determine whether to approve or disapprove the CT Plan.[2] Rule 608(b)(2)(i) of Regulation NMS provides that such proceedings shall be concluded within 180 days of the date of publication of notice of the plan or amendment and that the time for conclusion of such proceedings may be extended for up to 60 days (up to 240 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to the longer period.[3] The 180th day after publication of the Notice for the proposed CT Plan is April 11, 2021. The Commission is extending this 180-day period.

The Commission finds that it is appropriate to designate a longer period within which to conclude proceedings regarding the proposed CT Plan so that it has sufficient time to consider the proposed CT Plan and the comments received. Accordingly, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[4] the Commission designates June 10, 2021, as the date by which the Commission shall conclude the proceedings to determine whether to approve or disapprove the proposed CT Plan (File No. 4–757).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07593 Filed 4–13–21; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Act Release No. 90096 (Oct. 6, 2020), 85 FR 64565 (Oct. 13, 2020) (''Notice''). Comments received in response to the Notice can be found on the Commission's website at *https://www.sec.gov/comments/4-757/4-757.htm.*

[2] *See* Order Instituting Proceedings to Determine Whether to Approve or Disapprove a National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Act Release No. 90885 (Jan. 11, 2021), 86 FR 4142 (Jan. 15, 2021).

[3] *See* 17 CFR 242.608(b)(2)(i).

[4] *Id.*

[5] 17 CFR 200.30–3(a)(85).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91517; File No. SR–ICC–2021–009]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Proposed Rule Change Relating to the ICC Risk Parameter Setting and Review Policy

April 8, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

Act'') [1] and Rule 19b–4 thereunder,[2], notice is hereby given that on April 2, 2021, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to make changes to ICC's Risk Parameter Setting and Review Policy. These revisions do not require any changes to the ICC Clearing Rules (the ''Rules'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes revising its Risk Parameter Setting and Review Policy, which describes the process of setting and reviewing the risk management model core parameters and the performance of sensitivity analyses related to certain parameter settings. ICC believes that such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

ICC proposes to amend the ''Univariate Level Parameters'' subsection (Subsection 1.7.1). ICC proposes changes related to the univariate level parameters associated with the integrated spread response model component. Namely, ICC proposes to transition the risk management mean absolute deviation (''MAD'') monthly parameter update for index risk factors to an automatic daily update in the risk management system. The proposed changes would also specify that single name risk factor level risk management MADs are not subject to automatic updates and that the ICC Risk Department estimates and reviews the univariate single name integrated spread response parameters and their assumptions at least on a monthly basis.

ICC proposes minor clarifications to the ''Implied Distribution Parameters for Index Option Instruments'' subsection (Subsection 1.7.4). ICC previously replaced naming conventions for stress scenarios associated with the Lehman Brothers (''LB'') default with more generic naming conventions associated with extreme price changes, namely extreme price decreases and increases (the ''Extreme Price Change Scenarios'').[3] Relatedly, ICC proposes minor updates to replace references and notations to the scenarios associated with the LB default with the Extreme Price Change Scenarios. ICC also proposes to more clearly refer to ''stress MAD factors'' as ''stress implied MAD factors.''

ICC proposes amendments to the ''Routinely Updated Parameters'' subsection (Subsection 2.4). As described above, ICC proposes changes specifying that the index risk factor level risk management MADs are automatically updated daily in the risk management system and the other risk factor parameters are reviewed at least monthly.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [4] and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad–22.[5] In particular, Section 17A(b)(3)(F) of the Act [6] requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest. The proposed amendments transition the risk management MAD monthly parameter update for index risk factors to an automatic daily update. Such changes would timely capture any significant MAD changes and minimize the cumulative effect of MAD changes between parameter updates, and thus reduce the level of initial margin procyclicality. The proposed clarifications would further ensure readability and clarity with respect to ICC's process of setting and reviewing the model core parameters to ensure that the documentation remains up-to-date, clear, and transparent to support the effectiveness of ICC's risk management system. The proposed rule change is therefore consistent with the prompt and accurate clearing and settlement of the contracts cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[7]

Rule 17Ad–22(e)(2)(i) and (v) [8] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. ICC's Risk Parameter Setting and Review Policy clearly assigns and documents responsibility and accountability for the estimation and review of the model core parameters and the performance of sensitivity analyses. Regarding the univariate level parameters, the proposed changes continue to ensure that ICC maintains clear and transparent governance procedures and arrangements, including by describing the frequency of the parameter reviews and updates, the group involved in the review process, and prerequisites to implementing parameter updates. As such, in ICC's view, the proposed rule change continues to ensure that ICC maintains policies and procedures that are reasonably designed to provide for clear and transparent governance arrangements and specify clear and direct lines of responsibility, consistent with Rule 17Ad–22(e)(2)(i) and (v).[9]

Rule 17Ad–22(e)(4)(ii) [10] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See SR–ICC–2020–009 for more information on the incorporation of the Extreme Price Change Scenarios into ICC's risk management policies and procedures, including the Risk Parameter Setting and Review Policy.

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 240.17Ad–22.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] *Id.*

[8] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[9] *Id.*

[10] 17 CFR 240.17Ad–22(e)(4)(ii).

identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. The proposed changes promote the soundness of the model including by transitioning the risk management MAD monthly parameter update for index risk factors to an automatic daily update. Such changes would timely capture any significant MAD changes and minimize the cumulative effect of MAD changes between parameter updates, and thus reduce the level of initial margin procyclicality. ICC believes that the proposed rule change would thus enhance ICC's ability to manage risks and maintain appropriate financial resources. ICC proposes additional clarifications, including updating references to the Extreme Price Change Scenarios and specifying the frequency of the subject parameter reviews and updates. ICC believes that such changes enhance the readability and transparency of the Risk Parameter Setting and Review Policy, which would strengthen the documentation and ensure that it remains up-to-date, clear, and transparent. As such, the proposed amendments would strengthen ICC's ability to maintain its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad–22(e)(4)(ii).[11]

Rule 17Ad–22(e)(4)(vi)(B)[12] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by testing the sufficiency of its total financial resources available to meet the minimum financial resource requirements, including by conducting a comprehensive analysis on at least a monthly basis of underlying parameters and assumptions. Under the proposed changes, the Risk Parameter Setting and Review Policy continues to provide a clear framework for ICC to set and review the model core parameters and perform sensitivity analyses related to certain parameter settings on at least a monthly basis. The proposed changes transition the risk management MAD monthly parameter update for index risk factors to a more frequent and automatic daily update. As such, ICC believes the proposed rule change is consistent with the requirements of Rule 17Ad–22(e)(4)(vi)(B).[13]

Rule 17Ad–22(e)(6)(i)[14] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market. As described above, the index risk factor level risk management MADs would be automatically updated daily in the risk management system, which would timely capture any significant MAD changes and minimize the cumulative effect of MAD changes between parameter updates, and thus reduce the level of initial margin procyclicality. The additional clarifications would further promote clarity and transparency in the documentation. In ICC's view, the proposed changes thus enhance and strengthen ICC's process for reviewing and setting the model core parameters, which in turn serves to promote the soundness of ICC's risk management model and system, which will continue to consider and produce margin levels commensurate with the risks and particular attributes of each relevant product, portfolio, and market, consistent with the requirements of Rule 17Ad–22(e)(6)(i).[15]

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes to ICC's Risk Parameter Setting and Review Policy will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ICC–2021–009 on the subject line.

Paper Comments

Send paper comments in triplicate to, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2021–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[11] *Id.*

[12] 17 CFR 240.17Ad–22(e)(4)(vi)(B).

[13] *Id.*

[14] 17 CFR 240.17Ad–22(e)(6)(i).

[15] *Id.*

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2021–009 and should be submitted on or before May 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07600 Filed 4–13–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34243; File No. 812–15199]

Nuveen Fund Advisors, LLC, et al.

April 8, 2021.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

APPLICANTS: Nushares ETF Trust (the ''Trust''), Nuveen Fund Advisors, LLC (the ''Initial Adviser'') and Nuveen Securities, LLC (the ''Distributor'').

SUMMARY OF APPLICATION: Applicants request an order (''Order'') that permits: (a) The Funds (defined below) to issue shares (''Shares'') redeemable in large aggregations only (''creation units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value; (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; and (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of creation units. The relief in the Order would incorporate by reference terms and conditions of the same relief of a previous order granting the same relief sought by applicants, as that order may be amended from time to time (''Reference Order'').[1]

FILING DATE: The application was filed on February 5, 2021 and amended on March 16, 2021.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on May 3, 2021, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: c/o W. John McGuire, Esq., Morgan, Lewis & Bockius LLP, *john.mcguire@morganlewis.com.*

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876 or Trace W. Rakestraw, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants

1. The Trust is a business trust organized under the laws of the Commonwealth of Massachusetts and will consist of one or more series operating as a Fund. The Trust is registered as an open-end management investment company under the Act. Applicants seek relief with respect to Funds (as defined below), including three initial Funds (the ''Initial Funds''). The Funds will offer exchange-traded shares utilizing active management investment strategies as contemplated by the Reference Order.[2]

2. The Initial Adviser, an Illinois limited liability company, will be the investment adviser to the Initial Funds. Subject to approval by the Fund's board of trustees, an Adviser (as defined below) will serve as investment adviser to each Fund. The Initial Adviser is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may enter into sub-advisory agreements with other investment advisers to act as sub-advisers with respect to the Funds (each a ''Sub-Adviser''). Any Sub-Adviser to a Fund will be registered under the Advisers Act.

3. The Distributor is a limited liability company and a broker-dealer registered under the Securities Exchange Act of 1934, as amended, and will act as the principal underwriter of Shares of the Funds. Applicants request that the requested relief apply to any distributor of Shares, whether affiliated or unaffiliated with the Adviser and/or Sub-Adviser (included in the term ''Distributor''). Any Distributor will comply with the terms and conditions of the Order.

Applicants' Requested Exemptive Relief

4. Applicants seek the requested Order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act. The requested Order would permit applicants to offer Funds that utilize the NYSE Proxy Portfolio Methodology. Because the relief

[16] 17 CFR 200.30–3(a)(12).

[1] Natixis ETF Trust II, *et al.,* Investment Company Act Rel. Nos. 33684 (November 14, 2019) (notice) and 33711 (December 10, 2019) (order). Applicants are not seeking relief under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act (the ''Section 12(d)(1) Relief''), and relief under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act relating to the Section 12(d)(1) Relief, as granted in the Reference Order. Accordingly, to the extent the terms and conditions of the Reference Order relate to such relief, they are not incorporated by reference into the Order.

[2] To facilitate arbitrage, among other things, each day a Fund will publish a basket of securities and cash that, while different from the Fund's portfolio, is designed to closely track its daily performance.

requested is the same as certain of the relief granted by the Commission under the Reference Order and because the Initial Adviser has entered into a licensing agreement with NYSE Group, Inc. in order to offer Funds that utilize the NYSE Proxy Portfolio Methodology,[3] the Order would incorporate by reference the terms and conditions of the same relief of the Reference Order.

5. Applicants request that the Order apply to the Initial Funds and to any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Initial Adviser or any entity controlling, controlled by, or under common control with the Initial Adviser (any such entity, along with the Initial Adviser, included in the term ''Adviser''); (b) offers exchange-traded shares utilizing active management investment strategies as contemplated by the Reference Order; and (c) complies with the terms and conditions of the Order and the terms and conditions of the Reference Order that are incorporated by reference into the Order (each such company or series and each Initial Fund, a ''Fund'').[4]

6. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policies of the registered investment company and the general purposes of the Act. Applicants submit that for the reasons stated in the Reference Order the requested relief meets the exemptive standards under sections 6(c) and 17(b) of the Act.

[3] The NYSE Proxy Portfolio Methodology (as defined in the Reference Order) is the intellectual property of the NYSE Group, Inc.

[4] All entities that currently intend to rely on the Order are named as applicants. Any other entity that relies on the Order in the future will comply with the terms and conditions of the Order and the terms and conditions of the Reference Order that are incorporated by reference into the Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07590 Filed 4–13–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91506; File No. SR–FINRA–2021–005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Effective Date of the Temporary Amendments Set Forth in SR–FINRA–2020–026 and SR–FINRA–2020–043 From April 30, 2021, to June 30, 2021

April 8, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend the expiration date of the temporary amendments initially set forth in SR–FINRA–2020–026 and subsequently extended in SR–FINRA–2020–043 (collectively, the ''Temporary Qualification Examination Relief Filings'') from April 30, 2021, to June 30, 2021. FINRA does not anticipate providing any further extensions to the temporary amendments identified in this proposed rule change beyond June 30, 2021.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] If due to unforeseen circumstances a further extension is necessary, FINRA will submit a separate rule filing to further extend the temporary amendments.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In response to the COVID–19 global pandemic, last year FINRA began providing temporary relief to member firms from FINRA rules and requirements via frequently asked questions (''FAQs'') on its website.[5] Two of these FAQs [6] provided temporary relief to address disruptions to the administration of FINRA qualification examinations caused by the pandemic that have significantly limited the ability of individuals to sit for these examinations due to Prometric test center capacity issues.[7]

FINRA published the first FAQ on March 20, 2020, providing that individuals who were designated to function as principals under FINRA Rule 1210.04 prior to February 2, 2020, would be given until May 31, 2020, to pass the appropriate principal qualification examination.[8] FINRA

[5] *See* Frequently Asked Questions Related to Regulatory Relief Due to the Coronavirus Pandemic, available at *https://www.finra.org/rules-guidance/key-topics/covid-19/faq.*

[6] *See https://www.finra.org/rules-guidance/key-topics/covid-19/faq#qe.*

[7] At the outset of the COVID–19 pandemic, all FINRA qualification examinations were administered at test centers operated by Prometric. Based on the health and welfare concerns resulting from COVID–19, in March 2020 Prometric closed all of its test centers in the United States and Canada and began to slowly reopen some of them at limited capacity in May. Currently, Prometric has resumed testing in many of its United States and Canada test centers, at either full or limited occupancy, based on local and government mandates.

[8] FINRA Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a

Continued

revised the FAQ to extend the expiration of the temporary relief to pass the appropriate principal qualification examination initially until June 30, 2020, and then until August 31, 2020.

FINRA published the second FAQ on May 15, 2020, providing that individuals who were designated to function as Operations Professionals under FINRA Rule 1220(b)(3)(B) prior to February 2, 2020, would be given until June 30, 2020, to pass the applicable qualification examination.[9] Thereafter, FINRA revised the FAQ to extend the expiration of the temporary relief to pass the applicable qualification examination until August 31, 2020.

On August 28, 2020, FINRA filed with the Commission a proposed rule change, SR–FINRA–2020–026, to extend the expiration of the temporary relief provided via the two FAQs by adopting: (1) Temporary Supplementary Material .12 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under FINRA Rule 1210 (Registration Requirements), and (2) temporary Supplementary Material .07 (Temporary Extension of the Limited Period for Persons to Function as Operations Professionals) under FINRA Rule 1220 (Registration Categories).[10] Pursuant to this rule change, individuals who were designated prior to September 3, 2020, to function as a principal under FINRA Rule 1210.04 or an Operations Professional under FINRA Rule 1220(b)(3)(B) had until December 31, 2020, to pass the appropriate qualification examination. FINRA thereafter filed SR–FINRA–2020–043 to extend the expiration date of the temporary amendments set forth in SR–FINRA–2020–026 from December 31, 2020, to April 30, 2021.[11]

As mentioned in the Temporary Qualification Examination Relief Filings, FINRA began providing, and then extended, temporary relief to address the interruptions in the administration of FINRA qualification examinations at Prometric test centers and the limited ability of individuals to sit for the examinations caused by the COVID–19 pandemic.[12] FINRA also noted in the Temporary Qualification Examination Relief Filings that the pandemic could result in firms potentially experiencing significant disruptions to their normal business operations that may be exacerbated by being unable to keep principal or Operations Professional positions filled. Specifically, the limitation of in-person activities and staff absenteeism as a result of the health and welfare concerns stemming from COVID–19 could result in firms having difficulty finding other qualified individuals to transition into those roles or requiring them to reallocate employee time and resources away from other critical responsibilities at the firm.

While there are signs of improvement, the COVID–19 conditions necessitating the temporary relief persist and FINRA has determined that there is a continued need for this temporary relief beyond April 30, 2021. Although Prometric has resumed testing in many of its U.S. test centers, Prometric's safety practices mean that currently not all test centers are open, some of the open test centers are at limited capacity, and some open test centers are delivering only certain examinations that have been deemed essential by the local government.[13] In addition, while certain states have started to ease COVID–19 restrictions on businesses and social activities, public health officials continue to emphasize the importance for individuals to keep taking numerous steps to protect themselves and help slow the spread of the disease.[14]

Although the COVID–19 conditions necessitating the temporary relief persist, FINRA believes that an extension of the relief is necessary only until June 30, 2021, because FINRA recently expanded the availability of online examinations. Prior to this expansion, the ongoing effects of the pandemic made it impracticable for member firms to ensure that the individuals who they had designated to function in a principal or Operations Professional capacity, as set forth in FINRA Rules 1210.04 and 1220(b)(3)(B), could successfully sit for and pass an appropriate qualification examination within the 120-calendar day period required under the rules.[15] Specifically, if the individual wanted to take a qualifying examination, they were required to accept the health risks associated with taking an in-person examination because those examinations were not available online. On February 24, 2021, however, FINRA adopted an interim accommodation request process to allow candidates to take additional FINRA examinations online, including the General Securities Principal (Series 24) and Operations Professional (Series 99) examinations.[16] Because the qualifying examinations have been made available online only recently, FINRA is concerned that individuals who have been designated to function in a principal or Operations Professional capacity may not have sufficient time to schedule, study for, and take the applicable examination before April 30, 2021, the date the temporary amendments are set to expire. Therefore, FINRA is proposing to extend the expiration date of the temporary amendments set forth in the Temporary Qualification Examination Relief Filings until June 30, 2021. The proposed rule change would apply only to those individuals who have been designated to function as a principal or Operations Professional prior to March 3, 2021. As noted above, FINRA does not anticipate providing any further extensions to the temporary amendments and any individuals designated to function as a principal or Operations Professional on or after March 3, 2021, will need to successfully pass an appropriate qualification examination within 120 days.[17]

FINRA believes that this proposed continued extension of time is tailored to address the needs and constraints on a firm's operations during the COVID–19 pandemic, without significantly compromising critical investor protection. The proposed extension of time will help to minimize the impact of COVID–19 on firms by providing continued flexibility so that firms can ensure that principal and Operations Professional positions remain filled. The potential risks from the proposed extension of the 120-day period are mitigated by a firm's continued requirement to supervise the activities of these designated individuals and

Limited Period) allows a member firm to designate certain individuals to function in a principal capacity for 120 calendar days before having to pass an appropriate principal qualification examination.

[9] Pursuant to FINRA Rule 1220(b)(3)(B) (Qualifications), a person registering as an Operations Professional may function in that capacity for 120 days before having to pass an applicable qualification examination.

[10] *See* Exchange Act Release No. 89732 (September 1, 2020), 85 FR 55535 (September 8, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–026).

[11] *See* Exchange Act Release No. 90617 (December 9, 2020), 85 FR 81258 (December 15, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–043).

[12] Information about the continued impact of COVID–19 on FINRA-administered examinations is available at *https://www.finra.org/rules-guidance/key-topics/covid-19/exams.*

[13] Information from Prometric about its safety practices and the impact of COVID–19 on its operations is available at *https://www.prometric.com/corona-virus-update. See also supra* note 12.

[14] *See, e.g.,* Centers for Disease Control and Prevention, How to Protect Yourself & Others, *https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html.*

[15] *See supra* note 12.

[16] *Id.*

[17] FINRA notes that the proposed rule change would impact members that have elected to be treated as capital acquisition brokers (''CABs''), given that the CAB rule set incorporates the impacted FINRA rules by reference.

ensure compliance with federal securities laws and regulations, as well as FINRA rules.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.[18]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[19] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The proposed rule change is intended to minimize the impact of COVID–19 on firm operations by further extending the 120-day period certain individuals may function as a principal or Operations Professional without having successfully passed an appropriate qualification examination under FINRA Rules 1210.04 and 1220(b)(3)(B) until June 30, 2021. The proposed rule change does not relieve firms from maintaining, under the circumstances, a reasonably designed system to supervise the activities of their associated persons to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules that directly serve investor protection. In a time when faced with unique challenges resulting from the COVID–19 pandemic, FINRA believes that the proposed rule change is a sensible accommodation that will continue to afford firms the ability to ensure that critical positions are filled and client services maintained, while continuing to serve and promote the protection of investors and the public interest in this unique environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the temporary proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As set forth in the Temporary Qualification Examination Relief Filings, the proposed rule change is intended solely to extend temporary relief necessitated by the continued impacts of the COVID–19 outbreak and the related health and safety risks of conducting in-person activities. FINRA believes that the proposed rule change is necessary to temporarily rebalance the attendant benefits and costs of the obligations under FINRA Rules 1210 and 1220 in response to the impacts of the COVID–19 pandemic that would otherwise result if the temporary amendments were to expire on April 30, 2021.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. As noted above, FINRA stated that the conditions necessitating the temporary relief continue to exist and the proposed extension of time will help minimize the impact of the COVID–19 outbreak on FINRA member firms' operations by allowing them to keep principal and Operations Professional positions filled and minimizing disruptions to client services and other critical responsibilities. Despite signs of improvement, FINRA further stated that the ongoing extenuating circumstances of the COVID–19 pandemic make it impractical to ensure that individuals designated to act in these capacities are able to take and pass the appropriate qualification examination during the 120-calendar day period required under the rules.

FINRA observed that, following a nationwide closure of all test centers earlier in the year, some test centers have re-opened, but are operating at limited capacity or are only delivering certain examinations that have been deemed essential by the local government.[22] However, on February 24, 2021, FINRA began providing the General Securities Principal (Series 24) and Operations Professional (Series 99) examinations online through an interim accommodation request process.[23] Prior to this change, if individuals wanted to take these qualifying examinations, they were required to accept the health risks associated with taking an in-person examination. Even with the expansion of online qualifications examinations, FINRA stated that extending the expiration date of the relief set forth in the Temporary Qualification Examination Relief Filings until June 30, 2021 is still needed. FINRA stated that this temporary relief will provide flexibility to allow individuals who have been designated to function in a principal or Operations Professional capacity sufficient time to schedule, study for and take the applicable examination before the temporary relief expires. Notably, FINRA stated that it does not anticipate providing any further extensions to the temporary amendments and that any individuals designated to function as a principal or Operations Professional on or after March 3, 2021 will need to successfully pass an appropriate qualification examination within 120 days.

For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.[24] Accordingly, the Commission

[18] FINRA notes that waiver of the 30-day operative period here is consistent with the Commission's previous waivers of the operative period for the temporary relief provided in the Temporary Qualification Examination Relief Filings. *See supra* notes 10 and 11.

[19] 15 U.S.C. 78*o*–3(b)(6).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[22] *See supra* notes 12 and 13. FINRA states that Prometric has also had to close some reopened test centers due to incidents of COVID–19 cases.

[23] *See supra* note 12 (including the February 24, 2021 announcement of the interim accommodation process for candidates to take certain examinations, including the General Securities Principal (Series 24) and Operations Professional (Series 99) examinations, online.

[24] As noted above by FINRA, this proposal is an extension of temporary relief provided in the Temporary Qualification Examination Relief Filings where FINRA also requested and the Commission granted a waiver of the 30-day operative delay. *See* SR–FINRA–2020–026, 85 FR at 55538 and SR–FINRA–2020–043, 85 FR at 81260.

hereby waives the 30-day operative delay and designates the proposal operative upon filing.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2021–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2021–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2021–005 and should be submitted on or before May 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

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[25] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91515; File Nos. SR–NYSE–2021–12, SR–NYSEAMER–2021–08, SR–NYSENAT–2021–03, SR–NYSEArca–2021–11, SR–NYSECHX–2021–02]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE American LLC; NYSE National, Inc.; NYSE Arca, Inc.; NYSE Chicago, Inc.; Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of Proposed Rule Changes, Each as Modified by Amendment Nos. 1 and 2, to Establish Procedures for the Allocation of Power in Co-Location When Availability Falls Below Certain Thresholds

April 8, 2021.

I. Introduction

On February 4, 2021, New York Stock Exchange LLC, NYSE American LLC, NYSE National, Inc., NYSE Arca, Inc., and NYSE Chicago, Inc. (the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish procedures for the allocation of power in co-location if the Exchanges cannot satisfy all User demand.[3] Each proposed rule change was published for comment in the **Federal Register** on February 24, 2021.[4] The Commission received no comments on the proposed rule changes. On February 19, 2021, each Exchange filed Amendment No. 1 to its proposed rule change.[5] On April 5, 2021, each Exchange filed Amendment No. 2 to its proposed rule change.[6] This order provides notice of the filings of Amendment Nos. 1 and 2 to each of the proposed rule changes, and grants approval of the proposed rule changes, each as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Description of the Proposed Rule Changes, as Modified by Amendment Nos. 1 and 2

A. Background

As more fully set forth in the Notices and their respective co-location fee schedules, the Exchanges offer co-location customers (''Users'')[7] different

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* note 7 for the definition of ''User.''

[4] *See* Securities Exchange Act Release Nos. 91154 (February 18, 2021), 86 FR 11345 (SR–NYSE–2021–12); 91155 (February 18, 2021), 86 FR 11350 (SR–NYSEAMER–2021–08); 91158 (February 18, 2021), 86 FR 11367 (SR–NYSENAT–2021–03); 91156 (February 18, 2021), 86 FR 11356 (SR–NYSEArca–2021–11); and 91157 (February 18, 2021), 86 FR 11361 (SR–NYSECHX–2021–02) (each, a ''Notice''). For ease of reference, page citations are to the Notice for NYSE–2021–12.

[5] Amendment No. 1 revises the proposals to: (i) Provide additional explanation for why the Exchanges believe it is reasonable to integrate the procedures for the allocation of power with the procedures for the allocation of cabinets; (ii) clarify that a User may not increase its order on the Cabinet Waitlist or Combined Waitlist to a size that would exceed the Cabinet Limits or Combined Limits, as applicable; and (iii) correct typographical errors. Amendment No 1 for each filing is available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2021-12/srnyse202112-8393729-229404.pdf; https://www.sec.gov/comments/sr-nyseamer-2021-08/srnyseamer202108-8393752-229406.pdf; https://www.sec.gov/comments/sr-nysenat-2021-03/srnysenat202103-8394067-229408.pdf; https://www.sec.gov/comments/sr-nysearca-2021-11/srnysearca202111-8393756-229407.pdf; https://www.sec.gov/comments/sr-nysechx-2021-02/srnysechx202102-8394068-229409.pdf.* For ease of reference, page citations to Amendment No. 1 are to NYSE–2021–12 Amendment No. 1.

[6] Amendment No. 2 revises a portion of the proposed text of General Note 8 to state more clearly that the Combined Waitlist would cease to be in effect when unallocated power capacity is 100 kW or more, and at the time, the Cabinet Waitlist would apply if cabinet inventory is 10 or fewer cabinets. Amendment No. 2 for each filing is available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2021-12/srnyse202112-8393729-229404.pdf; https://www.sec.gov/comments/sr-nyseamer-2021-08/srnyseamer202108-8393752-229406.pdf; https://www.sec.gov/comments/sr-nysenat-2021-03/srnysenat202103-8394067-229408.pdf; https://www.sec.gov/comments/sr-nysearca-2021-11/srnysearca202111-8393756-229407.pdf; https://www.sec.gov/comments/sr-nysechx-2021-02/srnysechx202102-8394068-229409.pdf.* For ease of reference, page citations to Amendment No. 2 are to NYSE–2021–12 Amendment No. 2.

[7] For purposes of the Exchanges' co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release Nos. 76008 (September 29, 2015), 80 FR

options for purchasing cabinet space to house their servers and other equipment in co-location and meet their associated power needs.[8] Cabinets are offered as dedicated or partial cabinets, and Users are assessed an initial fee depending on type of cabinet purchased, and a monthly fee based on the number of kilowatts (''kW'') contracted for the cabinet.[9] Dedicated cabinets have a standard power allocation of either 4 kW or 8 kW (the ''Standard Cabinet Power''). Partial cabinets, which are available in increments of eight-rack units of space, may be allocated 1 or 2 kW. For dedicated cabinets a User may request power upgrades in excess of Standard Cabinet Power. A User may request that such additional power (''Additional Power'') be allocated to a cabinet when it is first set up or later. A User with a dedicated cabinet, for example, may develop its infrastructure in a manner that allows for Additional Power without need for an additional cabinet (*e.g.,* by overhauling wiring, circuitry and hardware to permit the dedicated cabinet to handle the increased power).[10]

The Exchanges also offer cabinets that do not have power: Cabinets for which power is not utilized (''PNU cabinets'').[11] PNU cabinets are reserved cabinet space that are not active and can be converted to a powered, dedicated cabinet when the User requests it. Although PNU cabinets do not use power, when the Exchanges establish a PNU cabinet, they allocate unused power capacity to it, depending on the User's requirements. The allocated power is kept in reserve for the PNU cabinet, and, upon the User's request, the PNU cabinet may be powered and used promptly.

The Exchanges currently have in place general measures for the conversion of PNU cabinets if such reserved cabinet space is needed for use,[12] and procedures for allocating cabinet space should cabinet inventory fall and remain below specified thresholds.[13] The Exchanges now propose to establish procedures for allocating power when cabinet inventory (and associated Standard Cabinet Power) and/or power inventory fall below specified thresholds.[14]

B. Proposed Limits and Waitlist Procedures if Standard Cabinet Power and/or Additional Power Fall Below Specified Thresholds

The Exchanges represent that Users have had an unprecedented demand for power, largely driven by the demands caused by volatile market conditions related to the COVID–19 pandemic and higher than usual trading volumes.[15] The further state that they are currently working to expand the amount of power and number of cabinets available in co-location.[16] Although current procedures address the potential for cabinet space to become limited, they do not address the potential for power in co-location to become limited due to heightened demand for (i) cabinets and associated Standard Cabinet Power and/or (ii) Additional Power.[17] The Exchanges now propose to establish procedures to address this possibility.

Specifically, the Exchanges propose to amend General Notes 7 and 8 on their respective fee schedules to supplement existing cabinet allocation procedures with power allocation procedures. As further explained in Amendment No. 1, a shortage in power or a shortage in both power and cabinets could impede the ability of the Exchanges to satisfy User demand for cabinets (which come with Standard Cabinet Power) and/or Additional Power. Accordingly, the proposed procedures establish power allocation procedures when (i) cabinet inventory falls to 40 cabinets or fewer (the ''Cabinet Threshold''), and/or (ii) total power inventory falls to 350 kW or below (the ''Power Threshold'').

General Note 7 currently provides that if the Cabinet Threshold is reached, a User would be required to convert or relinquish its PNU cabinets before purchasing new cabinets, and limit its purchase of new cabinets (dedicated and partial) to a maximum of four dedicated cabinets (which may be comprised of dedicated and partial cabinets, with two partial cabinets counting as one dedicated cabinet).[18] The Exchanges propose to amend General Note 7 to provide for limits on power reservation and new purchases if the Cabinet Threshold and/or the Power Threshold is reached.

If only the Cabinet Threshold is reached, the following limits (''Cabinet Limits'') would apply: (i) All Users with PNU cabinets would be required to either convert their PNU cabinets into dedicated cabinets or relinquish their PNU cabinets; and (ii) the Exchanges would cease offering or providing new PNU cabinets to all Users and Users would not be permitted to convert a currently used dedicated cabinet to a PNU cabinet.[19] As a result, the space and power reserved for PNU cabinets would be available for active use, and a User would be prevented from reserving but not using this resource when other Users are subject to purchasing limits.[20] In addition, new cabinet purchases would be limited, to a maximum of four dedicated cabinets (which may be comprised of dedicated and partial cabinets, with two partial cabinets counting as one dedicated cabinet), as is currently the case.

If only the Power Threshold is reached, or both the Cabinet Threshold and the Power Threshold are reached, then ''Combined Limits'' would apply: (i) All Users with PNU cabinets similarly would be required to either convert their PNU cabinets into dedicated cabinets or relinquish their PNU Cabinets; (ii) the Exchanges similarly would cease offering or providing new PNU cabinets to all Users and Users would not be permitted to convert a currently used dedicated cabinet to a PNU cabinet. As a result, the space and power reserved for PNU cabinets would be available for active use, and a User would be prevented from reserving but not using this resource when other Users are subject to purchasing limits. [21] In addition if the Combined Limits are in effect, then a User may purchase either or both of the following, so long as the combined power usage of such purchases is no more than a maximum of 32 kW: (A) New cabinets (dedicated and partial), subject to a maximum of four dedicated cabinets with standard power

60190 (October 5, 2015) (SR–NYSE–2015–40); 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SE–NYSEMKT–2015–67); 83351 (May 31. 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07); 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82); and 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–27).

[8] *See* Notice, *supra* note 4 at 11346. *See also, e.g.,* NYSE Price List, available at: *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.*

[9] *See* Notice, *supra* note 4 at 11346.

[10] *Id.*

[11] *Id.*

[12] *See* Notice, *supra* note 4 at 11346 and n. 10.

[13] *See* Securities Exchange Act Release No. 90732 (December 18, 2020), 85 FR 84443 (December 28, 2020) (SR–NYSE–2020–73, SR–NYSEAMER–2020–66, SR–NYSEArca–2020–82, SR–NYSECHX–2020–26, and SR–NYSENAT–2020–28) (Notice of Filings of Amendment No. 1 and Order Granting Approval of Proposed Rule Changes, Each as Modified by Amendment No. 1, Amending the Exchanges' Co-Location Services To Establish Procedures for the Allocation of Cabinets to Co-Located Users if Cabinet Inventory Falls Below Certain Thresholds).

[14] *See* Notice, *supra* note 4 at 11346.

[15] *Id.*

[16] *Id.*

[17] *See* Notice, *supra* note 4 at 11346 and Amendment No. 1 at 2–3.

[18] *See supra* note 13.

[19] The Exchange will notify each User with a PNU cabinet that the User has 30 business days to decide whether to contract to convert the PNU cabinet to a dedicated cabinet. If the User does not contract to use the PNU cabinet as a dedicated cabinet within such time, the PNU cabinet will be relinquished. *See* Notice, *supra* note 4 at 11347.

[20] *See* Notice, *supra* note 4 at 11347, 11349.

[21] *See id.*

allocations of 4 kW or 8 kW, or (B) Additional Power for new or existing cabinets. [22]

Amended General Note 7 would also specify that when the number of available cabinets is greater than 40 (above the Cabinet Threshold), the Cabinet Limits would cease to apply, and when the available power is greater than 350 kW (above the Power Threshold), the Combined Limits would cease to apply.[23]

General Note 8 currently sets forth waitlist procedures if cabinet inventory falls to zero. The Exchanges propose to amend General Note 8 to provide for both a ''Cabinet Waitlist'' and ''Combined Waitlist.'' Specifically, if cabinet inventory is zero (or a User requests, in writing, a number of cabinets that, if provided, would cause the available inventory to be zero), then a Cabinet Waitlist would be initiated. If a Cabinet Waitlist is in effect, then the following will apply: (i) Users will be required to either convert their PNU cabinets into dedicated cabinets or relinquish their PNU cabinets; (ii) a User would be placed on the Cabinet Waitlist based on the date its signed order is received and may only have one order for new cabinets at a time; (iii) a User may change the size of its cabinet order while it is on the Cabinet Waitlist, provided that the User may not increase the size of its order such that it would exceed the Cabinet Limits; (iv) as cabinets become available, the Exchanges would offer them to the User at the top of the waitlist; (v) a User would be removed from the Cabinet Waitlist when its order is completed and would remain at the top of the Cabinet Waitlist if its order is not completed; (vi) a User would be removed from the Cabinet Waitlist (a) at the User's request or (b) if the User turns down an offer of a cabinet of the same size it requested in its order; (vii) a User may turn down an Exchange's offer of a cabinet of a different size than the User requested in its order and remain at the top of the waitlist until its order is completed.; and (viii) a User that is removed from the Cabinet Waitlist but subsequently submits a new written order for cabinets would be added to the bottom of the Cabinet Waitlist.[24] The Exchanges would cease use of the Cabinet Waitlist when unallocated cabinet inventory is more than 10 cabinets.[25]

Similarly, if unallocated power capacity is zero (or if a User requests, in writing, an amount of power (whether Standard Cabinet Power or Additional Power) that, if provided, would cause the unallocated power capacity to be below zero) then a Combined Waitlist would be initiated. If a Combined Waitlist is in effect, then, operating in substantially the same manner as the Cabinet Waitlist, the following would apply: (i) All Users with PNU cabinets will be required to either convert their PNU cabinets into dedicated cabinets or relinquish their PNU cabinets; (ii) A User would be placed on the Combined Waitlist based on the date its signed order for cabinets and/or Additional Power is received, and may only have one order on the Combined Waitlist at a time; (iii) a User may change the size of its order while it is on the Combined Waitlist, provided that the User may not increase the size of its order such that it would exceed the Combined Limits; (iv) as Additional Power and/or cabinets become available, the Exchanges would offer them to the User at the top of the waitlist; (vi) a User would be removed from the Combined Waitlist when its order is completed and would remain at the top of the Combined Waitlist if its order is not completed; (vi) a User would be removed from the Combined Waitlist (a) at the User's request or (b) if the Exchange User turns down an offer of the same size it requested in its order; (vii) if the Exchange offers the User an offer that is different than its order, the User may turn down the offer and remain at the top of the waitlist until its order is completed.; (viii) a User that is removed from the Combined Waitlist but subsequently submits a new written order would be added to the bottom of the waitlist.[26] The Exchanges would cease use of the Combined Waitlist when unallocated power capacity it 100 kW or more; if at that time the unallocated cabinet inventory is 10 or fewer cabinets, the Cabinet Waitlist would enter into effect.[27]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes, each as modified by Amendment Nos. 1 and 2 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[28] In particular, the Commission finds that the proposed rule changes, each is modified by Amendment Nos. 1 and 2, are consistent with Section 6(b)(5) of the Act,[29] which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchanges propose rational objective procedures to address circumstances in which the supply of available power in co-location becomes limited due to heightened demand for Standard Cabinet Power and/or Additional Power. As the Exchanges work to expand the amount of power and number of cabinets available in co-location to address unprecedented demand, the establishment of allocation procedures when the proposed thresholds are crossed offers a reasonable buffer that would allow for limited purchases of Standard Cabinet Power or Additional Power before a waitlist is initiated. The Commission believes that the proposed Cabinet Limits and Combined Limits are reasonably designed to facilitate an equitable distribution if the cabinet inventory or power supply are insufficient to fully satisfy User demand, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Further, the proposed Cabinet Waitlist

[22] *See* Notice, *supra* note 4 at 11347. The purchase may be comprised of a mix of dedicated and partial cabinets, with two partial cabinets counting as one dedicated cabinet. *Id.* Consistent with current procedures, the Exchanges propose that a User will have to wait 30 days from the date of its signed order form before purchasing new cabinets or Additional Power again. Also consistent with current procedure, the Exchanges propose that if a User requests, in writing, a number of new cabinets and/or an amount of Additional Power that, if provided, would cause the unallocated power capacity to be below the Power Threshold or Cabinet Threshold, the Combined Limits would apply only to the portion of the User's order below the relevant threshold. *Id.*

[23] *See* Notice, *supra* note 4 at 11347. If the Cabinet Threshold is reached before the Power Threshold, the Cabinet Limits will be in effect until the Power Threshold is reached, after which the Combined Limits will apply. *Id.* If the Combined Limits are discontinued when unallocated cabinet inventory is 40 or fewer cabinets, the Cabinet Limits would enter into effect. *Id.*

[24] *See* Notice, *supra* note 4 at 11347.

[25] *Id.*

[26] *See* Notice, *supra* note 4 at 11347. If a Cabinet Waitlist exists when the requirements to create a Combined Waitlist are met, the Cabinet Waitlist will convert to the Combined Waitlist. If a Combined Waitlist exists when the requirements to create a Cabinet Waitlist are met, a new waitlist will not be created, and the Combined Waitlist will continue in effect. *Id.*

[27] *See* Amendment No. 2.

[28] In approving this proposed rule change, as modified by Amendment Nos. 1 and 2, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 15 U.S.C. 78f(b)(5).

and Combined Waitlist are reasonably designed to facilitate an equitable allocation of these resources while preventing Users from utilizing the waitlist as a method to obtain a greater portion of the power available. When cabinets and power are no longer at or below the specified thresholds, the proposed limits and waitlists will cease to apply. For the foregoing reasons, Commission finds that the proposals, each as modified by Amendment Nos. 1 and 2, are consistent with the Act.

IV. Solicitation of Comments on Amendment Nos. 1 and 2

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment Nos. 1 and 2 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Numbers SR–NYSE–2021–12, SR–NYSEAMER–2021–08, SR–NYSENAT–2021–03, SR–NYSEArca–2021–11, SR–NYSECHX–2021–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–NYSE–2021–12, SR–NYSEAMER–2021–08, SR–NYSENAT–2021–03, SR–NYSEArca–2021–11, SR–NYSECHX–2021–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Numbers SR–NYSE–2021–12, SR–NYSEAMER–2021–08, SR–NYSENAT–2021–03, SR–NYSEArca–2021–11, SR–NYSECHX–2021–02 and should be submitted on or before May 5, 2021.

V. Accelerated Approval of Proposed Rule Changes, Each as Modified by Amendment Nos. 1 and 2

The Commission finds good cause to approve the proposed rule changes, each as modified by Amendment Nos. 1 and 2, prior to the 30th day after the date of publication of notice of Amendment Nos. 1 and 2 in the **Federal Register**. Amendment No. 1. revises the proposals to: (i) Provide additional explanation for why the Exchanges believe it is reasonable to integrate the procedures for the allocation of power with the procedures for the allocation of cabinets; (ii) clarify that a User may not increase its order on the Cabinet Waitlist or Combined Waitlist to a size that would exceed the Cabinet Limits or Combined Limits, as applicable; and (iii) correct typographical errors. Amendment No. 2 revises a portion of the proposed text of General Note 8 to state more clearly that the Combined Waitlist would cease to be in effect when unallocated power capacity it 100 kW or more, and at the time, the Cabinet Waitlist would apply if cabinet inventory is 10 or fewer cabinets. The Commission believes that Amendment Nos. 1 and 2 provide additional clarity and detail to the rule text and additional explanation for the basis of the proposal, thereby facilitating the Commission's ability to make the findings set forth above to approve the proposal.

Accordingly, pursuant to Section 19(b)(2) of the Exchange Act,[30] the Commission finds good cause to approve the proposed rule changes, each as modified by Amendment Nos. 1 and 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule changes (SR–NYSE–2021–12, SR–NYSEAMER–2021–08, SR–NYSENAT–2021–03, SR–NYSEArca–2021–11, SR–NYSECHX–2021–02), each as modified by Amendment Nos. 1 and 2 be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07598 Filed 4–13–21; 8:45 am]

BILLING CODE 8011–01–P

[30] 15 U.S.C. 78s(b)(2).

[31] *See id.*

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91505; File No. SR–MIAX–2021–07]

Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule Regarding cPRIME Agency Order Rebates

April 8, 2021.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 26, 2021, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to extend the cap waiver of 1,000 contracts per leg for complex PRIME (''cPRIME'') [3] Agency Order rebates for all tiers under the Priority Customer Rebate Program (''PCRP'') [4] until June 30, 2021.

Background

Exchange Rule 518(b)(7) defines a cPRIME Order as a type of complex order [5] that is submitted for participation in a cPRIME Auction and trading of cPRIME Orders is governed by Rule 515A, Interpretation and Policies .12.[6] cPRIME Orders are processed and executed in the Exchange's PRIME mechanism, the same mechanism that the Exchange uses to process and execute simple PRIME orders, pursuant to Exchange Rule 515A.[7] PRIME is a process by which a Member may electronically submit for execution an order it represents as agent (an ''Agency Order'') against principal interest and/or solicited interest. The Member that submits the Agency Order (''Initiating Member'') agrees to guarantee the execution of the Agency Order by submitting a contra-side order representing principal interest or solicited interest (''Contra-Side Order''). When the Exchange receives a properly designated Agency Order for Auction processing, a request for response (''RFR'') detailing the option, side, size and initiating price is broadcasted to MIAX participants up to an optional designated limit price. Members may submit responses to the RFR, which can be either an Auction or Cancel (''AOC'') order or an AOC eQuote. A cPRIME Auction is the price-improvement mechanism of the Exchange's System pursuant to which an Initiating Member electronically submits a complex Agency Order into a cPRIME Auction. The Initiating Member, in submitting an Agency Order, must be willing to either (i) cross the Agency Order at a single price against principal or solicited interest, or (ii) automatically match against principal or solicited interest, the price and size of a RFR that is broadcast to MIAX participants up to an optional designated limit price. Such responses are defined as cPRIME AOC Responses or cPRIME eQuotes. The PRIME mechanism is used for orders on the Exchange's Simple Order Book.[8] The cPRIME mechanism is used for Complex Orders [9] on the Exchange's Strategy Book,[10] with the cPRIME mechanism operating in the same manner for processing and execution of cPRIME Orders that is used for PRIME Orders on the Simple Order Book.

The Exchange proposes to amend footnote ''*'' in Section 1)a)iii) of the Fee Schedule to extend the waiver of the contracts cap per leg for cPRIME Agency Order rebates for all tiers under the PCRP until June 30, 2021. Prior to a rule filing by the Exchange (described below), the Exchange limited the cPRIME Agency Order Credit to be payable only to the first 1,000 contracts per leg for each cPRIME Agency Order in all tiers under the PCRP. On February 28, 2020, the Exchange filed, and the Commission approved, the Exchange's proposal to waive the 1,000 contracts cap per leg for cPRIME Agency Order rebates for all tiers under the PCRP from March 1, 2020 until May 31, 2020.[11]

On May 29, 2020, the Exchange filed, and the Commission approved, the Exchange's proposal to extend the waiver of the 1,000 contracts cap per leg for cPRIME Agency Order rebates for all tiers under the PCRP from June 1, 2020 until July 31, 2020.[12] On July 31, 2020, the Exchange filed, and the Commission approved, the Exchange's proposal to extend the waiver of the 1,000 contracts cap per leg for cPRIME Agency Order rebates for all tiers under the PCRP from August 1, 2020 until August 31, 2020.[13] On August 25, 2020, the Exchange filed, and the Commission approved, the Exchange's proposal to extend the waiver of the 1,000 contracts cap per leg for cPRIME Agency Order rebates for all tiers under the PCRP from August 31, 2020 until December 31, 2020.[14] On December 21, 2020, the Exchange filed, and the Commission approved [sic], the

[3] ''cPRIME'' is the process by which a Member may electronically submit a ''cPRIME Order'' (as defined in Rule 518(b)(7)) it represents as agent (a ''cPRIME Agency Order'') against principal or solicited interest for execution (a ''cPRIME Auction''), subject to the restrictions set forth in Exchange Rule 515A, Interpretation and Policy .12. *See* Exchange Rule 515A.

[4] Under the PCRP, MIAX credits each Member the per contract amount resulting from each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in all multiply-listed option classes (excluding, in simple or complex as applicable, QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Exchange Rule 1400), provided the Member meets certain percentage thresholds in a month as described in the PCRP table. *See* Fee Schedule, Section 1)a)iii. ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). A ''Priority Customer Order'' means an order for the account of a Priority Customer. *See* Exchange Rule 100.

[5] A ''complex order'' is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the ''legs'' or ''components'' of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. A complex order can also be a ''stock-option'' order, which is an order to buy or sell a stated number of units of an underlying security coupled with the purchase or sale of options contract(s) on the opposite side of the market, subject to certain contingencies set forth in the proposed rules governing complex orders. For a complete definition of a ''complex order,'' *see* Exchange Rule 518(a)(5). *See also* Securities Exchange Act Release No. 78620 (August 18, 2016), 81 FR 58770 (August 25, 2016) (SR–MIAX–2016–26).

[6] *See* Securities Exchange Act Release No. 81131 (July 12, 2017), 82 FR 32900 (July 18, 2017) (SR–MIAX–2017–19) (Order Granting Approval of a Proposed Rule Change to Amend MIAX Options Rules 515, Execution of Orders and Quotes; 515A, MIAX Price Improvement Mechanism (''PRIME'') and PRIME Solicitation Mechanism; and 518, Complex Orders).

[7] *Id.*

[8] The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

[9] *See supra,* note 5. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing. *See* Exchange Rule 518(a)(5).

[10] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[11] *See* Securities Exchange Act Release No. 88349 (March 10, 2020), 85 FR 14995 (March 15, 2020) (SR–MIAX–2020–05).

[12] *See* Securities Exchange Act Release No. 89035 (June 9, 2020), 85 FR 36249 (June 15, 2020) (SR–MIAX–2020–12).

[13] *See* Securities Exchange Act Release No. 89530 (August 12, 2020), 85 FR 50845 (August 18, 2020) (SR–MIAX–2020–26).

[14] *See* Securities Exchange Act Release No. 89771 (September 4, 2020), 85 FR 55873 (September 10, 2020) (SR–MIAX–2020–28).

Exchange's proposal to extend the waiver of the 1,000 contracts cap per leg for cPRIME Agency Order rebates for all tiers under the PCRP from December 31, 2020, until March 31, 2021.[15]

The Exchange now proposes to extend the cap waiver of 1,000 contracts per leg for cPRIME Agency Order rebates for all tiers under the PCRP until June 30, 2021. The purpose of this proposed change is for business and competitive reasons and to continue to entice market participants to submit larger-sized cPRIME Agency Orders.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and self-regulatory organization (''SRO'') revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16] There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 15% of the market share of executed volume of multiply-listed equity options trades for the month of February 2021.[17] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity options order flow. More specifically, for the month of February 2021, the Exchange had a total market share of 4.04% of all equity options volume.[18]

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow (as further described below), discontinue, or reduce use of certain categories of products, in response to transaction and non-transaction fee changes. For example, on March 1, 2019, the Exchange filed with the Commission an immediately effective filing to decrease certain credits assessable to Members pursuant to the PCRP.[19] The Exchange experienced a decrease in total market share between the months of February and March of 2019. Accordingly, the Exchange believes that the March 1, 2019 fee change may have contributed to the decrease in the Exchange's market share and, as such, the Exchange believes competitive forces constrain options exchange transaction and non-transaction fees.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [20] in general, and furthers the objectives of Section 6(b)(4) of the Act [21] in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes its proposal to extend the waiver of the cap of 1,000 contracts per leg for cPRIME Agency Order rebates for all tiers under the PCRP until June 30, 2021 provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [22] There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 15% of the market share of executed volume of multiply-listed equity options trades for the month of February 2021.[23] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, for the month of February 2021, the Exchange had a total market share of 4.04% of all equity options volume.[24]

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to transaction and/or non-transaction fee changes. For example, on March 1, 2019, the Exchange filed with the Commission an immediately effective filing to decrease certain credits assessable to Members pursuant to the PCRP.[25] The Exchange experienced a decrease in total market share between the months of February and March of 2019. Accordingly, the Exchange believes that the March 1, 2019 fee change may have contributed to the decrease in the Exchange's market share and, as such, the Exchange believes competitive forces constrain options exchange transaction and non-transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes that its proposal to continue to waive the 1,000 contracts cap per leg for cPRIME Agency Order rebates for all tiers in the PCRP until June 30, 2021 is reasonable, equitably allocated, and not unfairly discriminatory because this change is for business and competitive reasons and available equally to all market participants. The Exchange cannot predict with certainty whether any market participant would submit additional cPRIME Agency Orders in excess of 1,000 contracts per leg in light of the proposal to continue to waive the cap of 1,000 contracts per leg for cPRIME Agency Order rebates for all tiers under the PCRP, but believes that market participants would continue to be encouraged to submit larger orders to obtain the additional credits. The Exchange believes that this proposed change would encourage increased cPRIME Agency Order flow, which will bring greater volume and liquidity to the Exchange, which benefits all market participants by providing more trading opportunities and tighter spreads.

[15] *See* Securities Exchange Act Release No. 90818 (December 29, 2020), 86 FR 350 (January 5, 2021) (SR–MIAX–2020–40).

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[17] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available at: *https://www.theocc.com/market-data/volume/default.jsp.*

[18] *See id.*

[19] *See* Securities Exchange Act Release No. 85301 (March 13, 2019), 84 FR 10166 (March 19, 2019) (SR–MIAX–2019–09).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(4) and (5).

[22] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[23] *See supra* note 17.

[24] *See id.*

[25] *See supra* note 19.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[26] the Exchange believes that the proposed rule changes would not impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would continue to encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders.

The Exchange does not believe that other market participants at the Exchange would be placed at a relative disadvantage by the proposed change to continue to waive the cap of 1,000 contracts per leg for cPRIME Agency Order rebates for all tiers under the PCRP until June 30, 2021. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that this proposal will continue to encourage Members to submit Priority Customer cPRIME Agency Orders, which will increase liquidity and benefit all market participants by providing more trading opportunities and tighter spreads. Accordingly, the Exchange believes that the proposed change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because it will continue to encourage order flow, which provides greater volume and liquidity, benefiting all market participants by providing more trading opportunities and tighter spreads.

The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 15% of the market share of executed volume of multiply-listed equity options trades for the month of February 2021.[27] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity options order flow. More specifically, for the month of February 2021, the Exchange had a total market share of 4.04% of all equity options volume.[28]

In such an environment, the Exchange must continually adjust its transaction and non-transaction fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule change reflects this competitive environment because it continues to encourage market participants to provide and send order flow to the Exchange. To the extent this is achieved, all the Exchange's market participants should benefit from the improved market quality.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[29] and Rule 19b–4(f)(2)[30] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2021–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2021–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2021–07 and should be submitted on or before May 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07594 Filed 4–13–21; 8:45 am]

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[26] 15 U.S.C. 78f(b)(8).

[27] *See supra* note 17.

[28] *See id.*

[29] 15 U.S.C. 78s(b)(3)(A)(ii).

[30] 17 CFR 240.19b–4(f)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91503; File No. SR–NYSECHX–2021–05]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.37

April 8, 2021

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 1

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

2021, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.37 to specify when the Exchange may adjust its calculation of the PBBO. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.37 to specify when the Exchange may adjust its calculation of the PBBO.[4]

Generally, the Exchange updates both the PBBO and NBBO based on quote updates received from data feeds from Away Markets, which are disclosed in Rule 7.37(d). In 2019, the Exchange described in a rule filing that when it routes interest to a protected quotation, the Exchange adjusts the PBBO.[5] The Exchange proposes to amend its rules to include that description in Rule 7.37 and provide additional specificity of when it may adjust its calculation of the PBBO.

As proposed, new paragraph (d)(2) of Rule 7.37 would provide:

> The Exchange may adjust its calculation of the PBBO based on information about orders it sends to Away Markets with protected quotations, execution reports received from those Away Markets, and certain orders received by the Exchange.

This proposed rule text is consistent with the Exchange's disclosure in the Pillar Filing and adds specificity that the Exchange may adjust its calculation of the PBBO based on execution reports received from Away Markets and certain orders received by the Exchange.[6]

Proposed Rule 7.37(d)(2) is based on MEMX LLC (''MEMX'') Rule 13.4(b) with two non-substantive differences.[7] First, the Exchange proposes to use the term ''PBBO,'' which is the term used in the Exchange's rules for the best-priced protected quotations, instead of ''NBBO.'' Second, the Exchange proposes to refer to ''Away Markets,'' which is a defined term in Rule 1.1, instead of ''other venues.''

MEMX has not disclosed circumstances when ''certain orders received by the Exchange'' would result in an adjustment to its calculation of the PBBO, but the Exchange believes that when MEMX receives an ISO with a Day time in force (''Day ISO''), it adjusts its calculation of the PBBO. The Exchange proposes that it would also adjust its calculation of the PBBO based on receipt of a Day ISO, which is consistent with how Nasdaq Stock Market LLC (''Nasdaq'')[8] and Cboe BZX Exchange, Inc. (''BZX'')[9] function.

Specifically, the Exchange proposes that it would adjust its calculation of the PBBO upon receipt of a Day ISO Order that the Exchange displays. As described in Rule 7.37(e)(3)(C), a Day ISO is eligible for the exception to locking or crossing a protected quotation because the member organization simultaneously routes an ISO to execute against the full size of any locked or crossed protection quotations, *i.e.,* the member organization routes ISOs to trade with contra-side protected quotations on Away Markets that are priced equal to or better than the arriving Day ISO on the Exchange. Because receipt of a Day ISO informs the Exchange that the member organization has routed ISOs to trade with Away Market contra-side protected quotations priced equal to or better than the Day ISO, upon receipt and displaying of a Day ISO, the Exchange proposes to adjust its calculation of the PBBO to exclude any contra-side protected quotations that are priced equal to or better than the Day ISO.

- For example, if the best protected bid is 10.00, Exchange A is displaying a protected offer at 10.05, and Exchange B is displaying a protected offer at 10.09, the Exchange's calculation of the PBBO would be 10.00×10.05. If the Exchange receives a Day ISO for 100 shares to buy priced at 10.05 that is displayed on the Exchange at 10.05, the Exchange would adjust its calculation of the PBBO to be 10.05×10.09 and would

[4] The term ''PBBO'' is defined in Rule 1.1 to mean the Best Protected Bid and the Best Protected Offer, which in turn mean the highest Protected Bid and the lowest Protected Offer, which refer to quotations in an NMS stock that is (i) displayed by an Automated Trading Center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an Automated Quotation that is the best bid or best offer of a national securities exchange or the best bid or best offer of a national securities association. The term NBBO is defined to mean the national best bid and offer. The Exchange notes that the NBBO may differ from the PBBO because the NBBO includes Manual Quotations, which are defined as any quotation other than an automated quotation. 17 CFR 242.600(b)(37).

[5] *See* Securities Exchange Act Release No. 86709 (August 20, 2019), 84 FR 44654, 44657 (August 26, 2019) (SR–NYSENat–2018–02) (Notice of filing) (''Pillar Filing'').

[6] The Exchange does not adjust its calculation of the NBBO based on information about orders sent to Away Markets, execution reports from Away Markets, or certain orders received by the Exchange. *Id.*

[7] MEMX Rule 13.4(b) provides: ''The Exchange may adjust its calculation of the NBBO based on information about orders sent to other venues with protected quotations, execution reports received from those venues, and certain orders received by the Exchange.''

[8] *See* Nasdaq Rule 4703(j) (''Upon receipt of an ISO, the System will consider the stated price of the ISO to be available for other Orders to be entered at that price, unless the ISO is not itself accepted at that price level (for example, a Post-Only Order that has its price adjusted to avoid executing against an Order on the Nasdaq Book) or the ISO is not Displayed.'') and Securities Exchange Act Release No. 74558 (March 20, 2015) 80 FR 16050, 16068 (March 26, 2015) (SR–Nasdaq–2015–024) (Notice).

[9] *See* Securities Exchange Act Release No. 74074 (January 15, 2015), 80 FR 3679, 3680 (January 23, 2015) (SR–BATS–2015–04) (Notice of filing and immediate effectiveness of proposed rule change to clarify the use of certain data feeds) (''The Exchange's [matching engine] will update the NBBO upon receipt of a Day ISO. When a Day ISO is posted on the BATS Book, the [matching engine] uses the receipt of a Day ISO as evidence that the protected quotes have been cleared, and the ME does not check away markets for equal or better-priced protected quotes. . . . . In determining whether to route an order and to which venue(s) it should be routed, the [routing engine] makes its own calculation of the NBBO. . . . The [routing engine] does not utilize Day ISO Feedback in constructing the NBBO; however, because all orders initially flow through the [matching engine], to the extent Day ISO Feedback has updated the [matching engine's] calculation of the NBBO, all orders processed by the [routing engine] do take Day ISO Feedback into account.'') (''BZX Filing'').

use this updated PBBO for execution, routing, and re-pricing determinations.

If a Day ISO is displayed on the Exchange at a price less aggressive than its limit price (*e.g.,* a Day ISO ALO that, if displayed at its limit price, would lock displayed interest on the Exchange), the Day ISO still informs the Exchange that the member organization has routed ISOs to trade with contra-side protected quotations on Away Markets that are priced equal to or better than the *limit price* of arriving Day ISO on the Exchange. The Exchange would therefore use the limit price of the Day ISO ALO to determine how to adjust its calculation of the contra-side Away Market PBBO, provided that contra-side displayed interest on the Exchange equal to the limit price of the Day ISO ALO would not be considered cleared. The price at which the arriving Day ISO ALO would be displayed would be the price that informs the Exchange's calculation of the same-side PBBO.

For example, when the best protected bid is 10.00 and Exchange A is displaying a protected offer at 10.05 and the Exchange's best displayed offer is 10.07, the Exchange's calculation of the PBBO would be 10.00 × 10.05, then:

- If the Exchange receives ALO ''1'' to buy at 10.06, it would be displayed at 10.04 and be assigned a working price of 10.05, which is the PBO (displayed on Exchange A),[10] and the Exchange would adjust the PBBO to be 10.04 × 10.05.
- If next, the Exchange receives Day ISO ALO ''2'' to buy at 10.07, the Exchange would be permitted to display that order at a price that crosses Exchange A's PBO because it is a Day ISO. However, because it locks the Exchange's best displayed offer, due to its ALO modifier, the Exchange would display Day ISO ALO ''2'' at 10.06 and it would have a working price of 10.06.[11] In this scenario, the Exchange proposes to adjust its calculation of the PBBO to be 10.06 × 10.07 and use this updated PBBO for execution, routing, and re-pricing determinations, including repricing the ALO ''1'' to buy to both work and display at its limit price of 10.06.

The Exchange believes that adjusting the PBBO in this manner is consistent with Regulation NMS because the member organization that submitted the Day ISO ALO to buy priced at 10.07 has represented that it has sent ISOs to trade with protected offers on other exchanges priced at 10.07 or lower. The only reason that such order would not be displayed at 10.07 on the Exchange is because it has an ALO modifier and cannot trade with the Exchange's displayed offer of 10.07. However, there is no restriction on that Day ISO ALO being displayed at 10.06, which crosses the Away Market PBO of 10.05. The Exchange believes in this circumstance, it is consistent with Regulation NMS for the Exchange to consider that any Away Market protected offers priced 10.07 or below have been cleared and therefore adjust its calculation of the contra-side Away Market PBBO for purposes of execution, routing, and repricing determinations based on the limit price of the Day ISO ALO.

The Exchange believes that the proposed amendments to Rule 7.37(d) would promote clarity and transparency in the Exchange's rules regarding circumstances when the Exchange may adjust its calculation of the PBBO. The Exchange does not believe this proposed rule change is novel. Rather, the Exchange believes that other equity exchanges that accept Day ISOs similarly adjust their calculation of the best protected bid and best protected offer for purposes of making execution, routing, and repricing determinations based on the receipt of Day ISOs, as described above. The Exchange anticipates that it will implement the technology change to how it calculates the PBBO in May 2021.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[13] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to promote clarity and transparency in Exchange rules of when the Exchange may adjust its calculation of the PBBO. The Exchange believes that adjusting its calculation of the PBBO based on receipt of a Day ISO is consistent with Regulation NMS because the member organization that entered such Day ISO has also sent ISOs to Away Markets to trade with contra-side protected quotations priced equal to or better than the Day ISO. For the same reasons that displaying a Day ISO at a price that locks or crosses the PBBO is consistent with Regulation NMS, the Exchange believes that adjusting its calculation of the PBBO based on receipt and display of a Day ISO for purposes of making execution, routing, and repricing determinations for other orders is also consistent with Regulation NMS. The Exchange further notes that the proposed rule text is not novel and is based on MEMX Rule 13.4(b) and is consistent with Nasdaq rules and the BZX Filing.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[14] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are designed to promote transparency and clarity in Exchange rules regarding when the Exchange may adjust its calculation of the PBBO. The Exchange believes that the proposed rule change would promote competition because the Exchange proposes to adjust its calculation of the PBBO under similar circumstances that other equity exchanges adjust their calculation of the PBBO, including MEMX, Nasdaq, and BZX.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and Rule

[10] *See* Rule 7.31(e)(2)(B)(i).

[11] *See* Rule 7.31(e)(3)(D)(ii). Currently, the Exchange would display such Day ISO ALO ''2'' at 10.06 and would adjust its calculation of the same-side PBBO and reprice same-side resting orders to the Day ISO price, but would not adjust its calculation of the contra-side PBBO for purposes of routing and execution determinations of new orders.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(8).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[17] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2021–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2021–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2021–05, and should be submitted on or before May 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07592 Filed 4–13–21; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(2)(B).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91519; File No. SR–PEARL–2021–13]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 404A, Select Provisions of Options Listing Procedures Plan

April 8, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 26, 2021, MIAX PEARL, LLC (''MIAX Pearl'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 404A, Select Provisions of Options Listing Procedures Plan.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 404A, Select Provisions of Options Listing Procedures Plan, to make a minor non-substantive change to update a Uniform Resource Locator (''URL'') to point to the complete copy of the current Options Listings Procedures Plan (''OLPP'') on the Options Clearing Corporation (''OCC'') website.

Currently, Exchange Rule 404A provides that, the provisions set forth in this Rule 404A were adopted by the Exchange as a quote mitigation strategy and are codified in the Options Listing Procedures Plan (''OLPP''). The current rule provides an invalid link to the OLPP, stating that, A complete copy of the current OLPP may be accessed at: *http://www.optionsclearing.com/components/docs/clearing/services/options_listing_procedures_plan.pdf.*

The Exchange notes that the current copy of the OLPP is no longer located at this URL and instead may be found at *https://www.theocc.com/Clearance-and-Settlement/Industry-Services.* Therefore, the Exchange proposes to remove the old invalid URL and replace it with the current valid URL.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of Section 6(b)(5) of the Act [4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with to, and facilitating transaction in securities. Further, the proposed rule change promotes the protection of investors and the public interest by providing an accurate URL to where the public and investors may find the current and complete copy of the OLPP. It is in the public and investors interest for Exchange rules to be accurate and concise so as to avoid the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will not impose any burden on intra-market competition as every Member of the Exchange benefits from the location of the OLPP being corrected in the Exchange's rulebook. Additionally, the proposed rule change is similar to the rules of other exchanges.[5]

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition as the proposed change is not a competitive filing and is being made solely to correct an inaccurate URL.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) [7] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2021–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2021–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2021–13 and should be submitted on or before May 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07602 Filed 4–13–21; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] *See* Nasdaq ISE Options 4, Section 6; and Cboe Exchange Rule 4.7(a).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 11405]

Notice of Updated Department of State Public Guidance for the Protecting Europe's Energy Security Act (PEESA), as Amended

ACTION: Notice.

SUMMARY: The Protecting Europe's Energy Security Act (PEESA) was amended by the FY21 National Defense Authorization Act (NDAA) on January 1, 2021. The Department of State is issuing updated, clarifying public guidance and Frequently Asked Questions (FAQs) for PEESA, as amended, on April 09, 2021, to provide public notice of the

Administration's implementation of PEESA, as amended, and the range of activities captured under the amended legislation.

DATES: *Applicable Date:* The public guidance and associated FAQs for PEESA, as amended, is effective on April 9, 2021.

ADDRESSES: The Department of State will publish the PEESA, as amended, public guidance and associated FAQs, on its website, replacing the October 2020 PEESA public guidance (*https://www.state.gov/protecting-europes-energy-security-act-peesa/*).

FOR FURTHER INFORMATION CONTACT: *Email CAATSA_PEESA_Energysanctions@state.gov.*

SUPPLEMENTARY INFORMATION:

Frequently Asked Questions on PEESA, as Amended by the National Defense Authorization Act for FY2021

The Department of State is committed to fully implementing sanctions authorities in the Protecting Europe's Energy Security Act of 2019 (''PEESA'' or ''the Act,'' Title LXXV, National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116–92), as amended on January 1, 2021 by the National Defense Authorization Act for FY2021 (FY2021 NDAA), Public Law 116–283. PEESA (Sec. 7503 of FY2020 NDAA), as amended (by FY2021 NDAA Sec. 1242). We continue to call on Russia to cease using its energy resources for coercive purposes. Russia uses its energy export pipelines to create national and regional dependencies on Russian energy supplies, leveraging these dependencies to expand its political, economic, and military influence, weaken European security, and undermine U.S. national security and foreign policy interests. These pipelines also reduce European energy diversification, and hence weaken European energy security.

PEESA, as amended, provides the United States with the authority to advance U.S. national security and foreign policy objectives, in particular to address Russian pipeline projects that create risks to U.S. national security, threaten Europe's energy security, and consequently, endanger Europe's political and economic welfare.

In accordance with PEESA Section 7503, as amended, the Secretary of State, in consultation with the Secretary of the Treasury, is to submit a report to Congress for the relevant period, identifying, among other things, (A) vessels that engaged in pipe-laying or pipe-laying activities at depths of 100 feet or more below sea level for the construction of the Nord Stream 2 pipeline project, the TurkStream pipeline project, or any project that is a successor to either such project; and (B) foreign persons that the Secretary of State, in consultation with the Secretary of the Treasury, determines have knowingly: (i) Sold, leased or provided, or facilitated selling, leasing, or providing those vessels for the construction of such a project; (ii) facilitated deceptive or structured transactions to provide those vessels for the construction of such a project; (iii) provided for those vessels underwriting services or insurance or reinsurance necessary or essential for the completion of such a project; (iv) provided services or facilities for technology upgrades or installation of welding equipment for, or retrofitting or tethering of, those vessels if the services or facilities are necessary or essential for the completion of such a project; or (v) provided services for the testing, inspection, or certification necessary or essential for the completion or operation of the Nord Stream 2 pipeline.

In addition, the FY2021 NDAA amendments to PEESA expanded the types of vessel activity subject to reporting requirements in Section 7503(a)(1)(A) from solely ''pipe-laying'' to also include ''pipe-laying activities,'' which are defined in Section 7503(k)(5) as ''activities that facilitate pipe-laying, including site preparation, trenching, surveying, placing rocks, backfilling, stringing, bending, welding, coating, and lowering of pipe.'' Furthermore, pursuant to Section 7503(c), sanctions are to be imposed on those foreign persons that are determined to meet the criteria pursuant to Section 7503(a)(1)(B)(i–v) of PEESA, as amended, and who are not certified for wind-down under the applicable wind-down period and are not subject to the exceptions under PEESA, as amended. The amendments made to PEESA by the FY2021 NDAA require consultation with the governments of Norway, Switzerland, the United Kingdom, and member countries of the EU before imposing any sanctions.

Persons with additional questions are encouraged to contact the State Department at *CAATSA_PEESA_Energysanctions@state.gov.*

Frequently Asked Questions

Q: What conduct does Section 7503(a)(1)(B) of PEESA, as amended, cover?

A: Section 7503(a)(1)(B)(i), as amended, requires that the report to Congress include foreign persons that the Secretary of State, in consultation with the Secretary of the Treasury, determines have knowingly ''sold, leased, or provided or facilitated selling, leasing, or providing those vessels [*i.e.,* the vessels listed for having engaged in pipe-laying or pipe-laying activities at depths of 100 feet or more below sea level] for the construction of such a project.'' Such projects include Nord Stream 2, TurkStream, or any project that is a successor to either such project. Section 7503(a)(1)(B)(i) covers foreign persons who provide or finance the vessels and also covers certain forms of support provided to the vessels not already covered under Sections 7503(a)(1)(B)(ii–v).

Additionally, Section 7503(a)(1)(B)(ii) covers foreign persons that the Secretary of State, in consultation with the Secretary of the Treasury, determines have knowingly facilitated deceptive or structured transactions to provide those vessels for the construction of such a project. Such projects include Nord Stream 2, TurkStream, or any project that is a successor to either such project.

Further, Sections 7503(a)(1)(B)(iii)–(v) cover foreign persons that the Secretary of State, in consultation with the Secretary of the Treasury, determines have knowingly: Provided for those vessels underwriting services or insurance or reinsurance necessary or essential for the completion of any of the aforementioned projects; provided services or facilities for technology upgrades or installation of welding equipment for, or retrofitting or tethering of, those vessels if the services or facilities are necessary or essential for the completion of any of the aforementioned projects; or provided services for the testing, inspection, or certification necessary or essential for the completion or operation of the Nord Stream 2 pipeline.

Q: Does PEESA provide for certain activities to be excepted from sanctions?

A: PEESA, as amended, includes a number of exceptions specifying activities to which sanctions under PEESA shall not apply. For example, pursuant to Section 7503(e)(3) of PEESA, as amended, sanctions under this section shall not apply with respect to a person providing provisions to a vessel identified under Section 7503(a)(1)(A) if such provisions are intended for the safety and care of the crew aboard the vessel, the protection of human life aboard the vessel, or the maintenance of the vessel to avoid any environmental or other significant damage.

Pursuant to Section 7503(e)(4) of PEESA, as amended, sanctions under this section shall not apply with respect to a person for engaging in activities necessary for or related to the repair or

maintenance of, or environmental remediation with respect to, Nord Stream 2, TurkStream, or any project that is a successor to either such project.

Pursuant to Section 7503(e)(6) of PEESA, as amended, sanctions under this section shall not apply with respect to the European Union; the government of Norway, Switzerland, the United Kingdom or any member country of the European Union; or any entity of the European Union or a government noted herein that is not operating as a business enterprise.

Q. How does the U.S. government plan to implement the wind-down specified in Section 1242(f) of the National Defense Authorization Act for Fiscal Year 2021 (NDAA)?

A: Upon passage of the FY2021 NDAA on January 1, 2021, the amendments made to PEESA pursuant to Section 1242(f) of the FY2021 NDAA immediately became effective. In accordance with the wind-down provision in Section 1242(f) of the FY2021 NDAA, persons that were knowingly engaged in conduct subject to sanctions under the amendments to PEESA would have needed to cease construction-related activity or engage in good faith efforts to wind down sanctionable activity no later than 30 days after PEESA, as amended, became effective. That date was January 31, 2021. The wind-down provision in Section 1242(f) of the FY2021 NDAA is not applicable to activities that were already subject to sanctions under Section 7503 of PEESA prior to the amendments in the FY2021 NDAA. Following the conclusion of the wind-down period, the Secretary of State, in consultation with the Secretary of the Treasury, is required to impose sanctions on those foreign persons that are determined to meet the criteria pursuant to Section 7503(a)(1)(B)(i–v) of PEESA, as amended, and who are not otherwise subject to the exceptions under PEESA, as amended.

Virginia E. Palmer,

Acting Assistant Secretary, Bureau of Energy Resources, Department of State.

[FR Doc. 2021–07662 Filed 4–13–21; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF STATE

[Public Notice: 11395]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''The Buddha Transcendent'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with the foreign owner or custodian for temporary display in the exhibition ''The Buddha Transcendent'' at the Museum of Fine Arts, Houston, in Houston, Texas and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–07613 Filed 4–13–21; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES.**

DATES: March 1–31, 2021.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Water Source Approval—Issued Under 18 CFR 806.22(f)

1. Cabot Oil & Gas Corporation; Pad ID: BenediktK P1; ABR–202102003; Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 1, 2021.
2. SWN Production Company, LLC; Pad ID: WY–18 WEST PAD; ABR–201510008.R1; Eaton and Mehoopany Townships, Wyoming County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 1, 2021.
3. SWN Production Company, LLC; Pad ID: GU–X SEYMOUR PAD; ABR–201512010.R1; Stevens Township, Bradford County; and Rush Township, Susquehanna County; Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 1, 2021.
4. SWN Production Company, LLC; Pad ID: Hayes Well Pad; ABR–201202034.R2; Silver Lake Township, Bradford County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 1, 2021.
5. SWN Production Company, LLC; Pad ID: Demento Pad; ABR–201102036.R2; Silver Lake Township, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: March 2, 2021.
6. SWN Production Company, LLC; Pad ID: Knapik Well Pad; ABR–201102033.R2; Liberty Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 2, 2021.
7. BKV Operating, LLC; Pad ID: Yarasavage Well Pad; ABR–201102021.R2; Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 2, 2021.
8. Repsol Oil & Gas USA, LLC; Pad ID: HARTNETT (05 097) R; ABR–201010045.R2; Orwell and Warren Townships, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: March 4, 2021.
9. Rockdale Marcellus, LLC; Pad ID: Guillaume 715; ABR–201011002.R2; Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: March 4, 2021.
10. SWN Production Company, LLC; Pad ID:

Herman Well Pad; ABR–201102035.R2; Franklin Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 4, 2021.

11. Repsol Oil & Gas USA, LLC; Pad ID: ANTISDEL (05 036) M; ABR–201009016.R2; Warren Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: March 8, 2021.
12. Repsol Oil & Gas USA, LLC; Pad ID: WATKINS (03 052) M; ABR–201011048.R2; Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: March 9, 2021.
13. Seneca Resources Company, LLC; Pad ID: Peffer-Strong 483; ABR–202103001; Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 9, 2021.
14. SWN Production Company, LLC; Pad ID: Sheldon Pad; ABR–201102028.R2; Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: March 12, 2021.
15. VEC Energy, LLC; Pad ID: Brookfield #1 Pad; ABR–201601003.R1; Brookfield Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: March 12, 2021.
16. Chesapeake Appalachia, L.L.C.; Pad ID: DPH; ABR–201103011.R2; Windham Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 15, 2021.
17. Chesapeake Appalachia, L.L.C.; Pad ID: Dziuba; ABR–201103012.R2; Tuscarora Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 15, 2021.
18. Cabot Oil & Gas Corporation; Pad ID: HawleyJ P1; ABR–201103009.R2; Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 15, 2021.
19. Cabot Oil & Gas Corporation; Pad ID: Ely P3; ABR–20080709.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 16, 2021.
20. Cabot Oil & Gas Corporation; Pad ID: Teel P3; ABR–20080702.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 16, 2021.
21. Cabot Oil & Gas Corporation; Pad ID: HeitzenroderA P2; ABR–202103002.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 15, 2021.
22. Chief Oil & Gas, LLC; Pad ID: W & L Wilson Drilling Pad #1; ABR–201103014.R2; Lemon Township, Wyoming County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: March 16, 2021.
23. Chesapeake Appalachia, L.L.C.; Pad ID: Acton; ABR–201103013.R2; Rome Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 16, 2021.
24. Rockdale Marcellus, LLC; Pad ID: Neal 375; ABR–201012053.R2; Union Township, Tioga County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: March 16, 2021.
25. Repsol Oil & Gas USA, LLC; Pad ID: DEWING (05 100) R; ABR–201102020.R2; Warren Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: March 16, 2021.
26. Seneca Resources Company, LLC; Pad ID: Cole 495; ABR–201102016.R2; Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 16, 2021.
27. Chief Oil & Gas, LLC; Pad ID: NELSON UNIT PAD B; ABR–202103005; Forks Township, Sullivan County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: March 16, 2021.
28. Chesapeake Appalachia, L.L.C.; Pad ID: Burke; ABR–201103019.R2; Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 18, 2021.
29. Cabot Oil & Gas Corporation; Pad ID: KrisuleviczV P1; ABR–201102027.R2; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 18, 2021.
30. Rockdale Marcellus, LLC; Pad ID: Marshall Brothers Inc. 731; ABR–201012057.R2; Jackson Township, Lycoming County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: March 18, 2021.
31. Cabot Oil & Gas Corporation; Pad ID: ZickJ P1; ABR–201103020.R2; Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 18, 2021.
32. Seneca Resources Company, LLC; Pad ID: Wilson 283; ABR–201012048.R2; Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 19, 2021.
33. Chief Oil & Gas, LLC; Pad ID: Curtin Drilling Pad #1; ABR–201012034.R2; Albany Township, Bradford County; and Cherry Township, Sullivan County; Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: March 22, 2021.
34. Chesapeake Appalachia, L.L.C.; Pad ID: Jones Pad; ABR–201103022.R2; Standing Stone Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 22, 2021.
35. Seneca Resources Company, LLC; Pad ID: COP Pad O; ABR–201103030.R2; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 22, 2021.
36. Seneca Resources Company, LLC; Pad ID: PHC Pad BB; ABR–201103028.R2; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 22, 2021.
37. Seneca Resources Company, LLC; Pad ID: PPHC Pad B; ABR–201103023.R2; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 22, 2021.
38. EOG Resources, Inc.; Pad ID: JANOWSKY 1H; ABR–201008054.R2; Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: March 22, 2021.
39. EOG Resources, Inc.; Pad ID: MELCHIONNE 1H; ABR–201008087.R2; Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: March 22, 2021.
40. EOG Resources, Inc.; Pad ID: OBERKAMPER Pad; ABR–201009004.R2; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: March 22, 2021.
41. EOG Resources, Inc.; Pad ID: Rightmire 1H; ABR–201008082.R2; Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: March 22, 2021.
42. EOG Resources, Inc.; Pad ID: STURDEVANT 1H; ABR–201008155.R2; Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: March 22, 2021.
43. EOG Resources, Inc.; Pad ID: WENGER Pad; ABR–201008118.R2; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: March 22, 2021.
44. EOG Resources, Inc.; Pad ID: SEAMAN 1H; ABR–201008091.R2; Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: March 22, 2021.
45. EOG Resources, Inc.; Pad ID: GROSS 1H Pad; ABR–201008098.R2; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: March 22, 2021.
46. Chesapeake Appalachia, L.L.C.; Pad ID: Shoemaker-Saxe; ABR–202103004; Colley Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 22, 2021.
47. Chief Oil & Gas, LLC; Pad ID: Kerrick Drilling Pad #1; ABR–201103040.R2; Asylum Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: March 24, 2021.
48. Seneca Resources Company, LLC; Pad ID: Knowlton 303; ABR–201101077.R2; Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 24, 2021.
49. Seneca Resources Company, LLC; Pad ID: MY TB INV LLC 891; ABR–201102010.R2; Deerfield Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 24, 2021.
50. Seneca Resources Company, LLC; Pad ID: Butler 853; ABR–201103037.R2; Middlebury Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 24, 2021.
51. Diversified Production, LLC; Pad ID: Phoenix S; ABR–201012009.R2; Duncan Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 24, 2021.
52. Diversified Production, LLC; Pad ID: Phoenix R; ABR–201011057.R2; Duncan Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 24, 2021.
53. Chesapeake Appalachia, L.L.C.; Pad ID: Sarah; ABR–201103041.R2; Athens

Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 25, 2021.

54. Seneca Resources Company, LLC; Pad ID: Weiner 882; ABR–201103045.R2; Farmington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 25, 2021.
55. Beech Resources, LLC.; Pad ID: ISA Well Site; ABR–202103003; Lycoming Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: March 25, 2021.
56. Pennsylvania General Energy Company, L.L.C.; Pad ID: COP Tract 726 Pad B; ABR–201706002.1; Plunkett's Creek Township, Lycoming County, Pa.; Modification of Consumptive Use of Up to 4.5000 mgd; Approval Date: March 26, 2021.
57. ARD Operating, LLC; Pad ID: Cynthia M. Knispel Pad A; ABR–201103038.R2; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 26, 2021.
58. Rockdale Marcellus, LLC; Pad ID: Wesneski 724; ABR–201007017.R2; Union Township, Tioga County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: March 29, 2021.
59. Chesapeake Appalachia, L.L.C.; Pad ID: Barclay; ABR–201103044.R2; Franklin Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 29, 2021.
60. Chesapeake Appalachia, L.L.C.; Pad ID: Hi-Lev; ABR–201103051.R2; Troy Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 29, 2021.
61. Seneca Resources Company, LLC; Pad ID: DCNR 595 PAD C; ABR–201103047.R2; Bloss Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 29, 2021.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: April 9, 2021.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2021–07655 Filed 4–13–21; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Grandfathering (GF) Registration Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES.**

DATES: March 1–31, 2021.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries May be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects, described below, pursuant to 18 CFR 806, Subpart E for the time period specified above:

Grandfathering Registration Under 18 CFR Part 806, Subpart E:

1. TableTrust Brands LLC—Freebird East, GF Certificate No. GF–202103157, Bethel Township, Lebanon County, Pa., Wells 2 and 6 and consumptive use; Issue Date: March 3, 2021.
2. Empire Kosher Poultry, Inc., GF Certificate No. GF–202103158, Walker Township, Juniata County, Pa., consumptive use; Issue Date: March 12, 2021.
3. Town of Vestal—Public Water Supply System, GF Certificate No. GF–202103159, Town of Vestal, Broome County, N.Y., Wells 1–3, 4–2, 4–3, and 5–1; Issue Date: March 18, 2021.
4. Canton Borough Authority—Public Water Supply System, GF Certificate No. GF–202103160, Canton Borough, Bradford County, Pa., Wells 1 and 2; Issue Date: March 18, 2021.
5. Montoursville Borough—Public Water Supply System, GF Certificate No. GF–202103161, Montoursville Borough and Armstrong Township, Lycoming County, Pa., Wells 2, 3, 4, 5 and Sylvan Dell Spring; Issue Date: March 18, 2021.

Dated: April 9, 2021.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2021–07656 Filed 4–13–21; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2021–2066]

Petition for Exemption; Summary of Petition Received; B/E Aerospace—FSI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 4, 2021.

ADDRESSES: Send comments identified by docket number FAA–2020–1057 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael H. Harrison, AIR–612, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, phone and fax 206–231–3368, email *Michael.Harrison@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Des Moines, Washington, on March 31, 2021.

Daniel J. Elgas,

Manager, Strategic Policy Management Branch, Policy and Innovation Division, Aircraft Certification Service.

Petition For Exemption

Docket No.: FAA–2020–1057.

Petitioner: B/E Aerospace—FSI.

Section(s) of 14 CFR Affected: §§ 25.813(e) and 121.310(f)(6).

Description of Relief Sought: B/E Aerospace—FSI is seeking relief from the requirement that no door may be installed between any passenger seat that is occupiable for takeoff and landing and any passenger emergency exit, such that the door crosses any egress path (including aisles, crossaisles and passageways), as well as the requirement that no person may operate an airplane that incorporates a door installed between any passenger seat occupiable for takeoff and landing and any passenger emergency exit. The petitioner is proposing to install expandable monuments at emergency exits on Boeing Model 777 and Model 787 airplanes and Airbus Model A330 and Model A350 airplanes. The expandable monument is a modular transforming-unit that exploits underutilized areas in the cabin by expanding to provide additional usable space. This is achieved by taking advantage of unused space, unfolding in-flight to provide additional service areas. When the modular units are deployed, they block the emergency exits and the attendant seats, located at the exits.

[FR Doc. 2021–07621 Filed 4–13–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2021–0036]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on March 8, 2021, Georgetown Loop Railroad (GLRX) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 230, Steam Locomotive Inspection and Maintenance Standards. FRA assigned the petition Docket Number FRA–2021–0036.

Specifically, GLRX requests relief from 49 CFR 230.16(a)(2), *Fifth annual inspection,* of flexible staybolts and caps, for a period of one year for locomotive GLRX #111. The locomotive has operated for 375 service days since it entered service in 2016 with a newly constructed boiler. GLRX states that because of the coronavirus disease 2019, GLRX #111 did not incur any service days in 2020. If granted the requested relief, GLRX explains it would perform the required testing at the 2022 annual inspection.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 1, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2021–07654 Filed 4–13–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2021–0030]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on February 25, 2021, Iowa Interstate Railroad (IAIS) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 230, Steam Locomotive Inspection and Maintenance Standards. FRA assigned the petition Docket Number FRA–2021–0030.

Specifically, IAIS requests relief for its steam locomotive IAIS 6988, from 49 CFR 230.17(a), *One thousand four hundred seventy-two (1472) service day inspection,* to extend the 1472 service day inspection (SDI) 106 calendar days from September 5, 2021, to December 20, 2021, if coronavirus disease 2019 (COVID–19) restrictions are reduced to permit servicing and operation. If COVID–19 restrictions are not lifted, and operation is limited or not permitted in 2021, IAIS requests an extension of the 1472 SDI until December 20, 2022, a total of 471 calendar days.

IAIS states that the COVID–19 public health emergency has caused IAIS to halt excursion service, which resulted in IAIS 6988 only accumulating one service day since its 2020 annual inspection. IAIS anticipates operating IAIS 6988 for about 40 service days in 2021. Further, IAIS states that during the extension period, all regularly scheduled maintenance and inspections required will be performed, and the IAIS 6988 will be stored indoors, serviceable, and drained.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in

connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 1, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2021–07653 Filed 4–13–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petitions for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Volkswagen Group of America, Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Volkswagen Group of America, Inc.'s (Volkswagen) petition for exemption from the Federal Motor Vehicle Theft Prevention Standard (theft prevention standard) for its Taos vehicle line beginning in model year (MY) 2022.

DATES: The exemption granted by this notice is effective beginning with the 2022 model year.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard, Office of International Policy, Fuel Economy, and Consumer Programs, NHTSA, West Building, W43–439, NRM–310, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. Chapter 331, the Secretary of Transportation (and the National Highway Traffic Safety Administration (NHTSA) by delegation) is required to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. NHTSA promulgated regulations at part 541 (theft prevention standard) to require parts-marking for specified passenger motor vehicles and light trucks. Pursuant to 49 U.S.C. 33106, manufacturers that are subject to the parts-marking requirements may petition the Secretary of Transportation for an exemption for a line of passenger motor vehicles equipped as standard equipment with an antitheft device that the Secretary decides is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements. In accordance with this statute, NHTSA promulgated 49 CFR part 543, which establishes the process through which manufacturers may seek an exemption from the theft prevention standard.

49 CFR 543.5 provides general submission requirements for petitions and states that each manufacturer may petition NHTSA for an exemption of one vehicle line per model year. Among other requirements, manufacturers must identify whether the exemption is sought under section 543.6 or section 543.7. Under section 543.6, a manufacturer may request an exemption by providing specific information about the antitheft device, its capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements. Section 543.7 permits a manufacturer to request an exemption under a more streamlined process if the vehicle line is equipped with an antitheft device (an ''immobilizer'') as standard equipment that complies with one of the standards specified in that section.

Section 543.8 establishes requirements for processing petitions for exemption from the theft prevention standard. As stated in section 543.8(a), NHTSA processes any complete exemption petition. If NHTSA receives an incomplete petition, NHTSA will notify the petitioner of the deficiencies. Once NHTSA receives a complete petition it will process it and, in accordance with section 543.8(b), will grant the petition if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541.

Section 543.8(c) requires NHTSA to issue its decision either to grant or to deny an exemption petition not later than 120 days after the date on which a complete petition is filed. If NHTSA does not make a decision within the 120-day period, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year.[1] Exemptions granted under part 543 apply only to the vehicle line or lines that are subject to the grant and that are equipped with the antitheft device on which the line's exemption was based, and are effective for the model year beginning after the model year in which NHTSA issues the notice of exemption, unless the notice of exemption specifies a later year.

Sections 543.8(f) and (g) apply to the manner in which NHTSA's decisions on petitions are to be made known. Under section 543.8(f), if the petition is sought under section 543.6, NHTSA publishes a notice of its decision to grant or deny the exemption petition in the **Federal Register** and notifies the petitioner in writing. Under section 543.8(g), if the petition is sought under section 543.7, NHTSA notifies the petitioner in writing

[1] 49 U.S.C. 33106(d).

of the agency's decision to grant or deny the exemption petition.

This grant of petition for exemption considers Volkswagen Group of America, Inc.'s (Volkswagen) petition for its Taos vehicle line beginning in MY 2022. Volkswagen's petition is granted under 49 U.S.C. 33106 and 49 CFR 543.8(c), which state that if the Secretary of Transportation (NHTSA, by delegation) does not make a decision about a petition within 120 days of the petition submission, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year. Separately, based on the information provided in Volkswagen's petition, NHTSA has determined that the antitheft device to be placed on its vehicle line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard.

I. Specific Petition Content Requirements Under 49 CFR 543.6

Pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention,* Volkswagen petitioned for an exemption for its specified vehicle line from the parts-marking requirements of the theft prevention standard, beginning in MY 2022. Volkswagen petitioned under 49 CFR 543.6, *Petition: Specific content requirements,* which, as described above, requires manufacturers to provide specific information about the antitheft device installed as standard equipment on all vehicles in the line for which an exemption is sought, the antitheft device's capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements.

More specifically, section 543.6(a)(1) requires petitions to include a statement that an antitheft device will be installed as standard equipment on all vehicles in the line for which the exemption is sought. Under section 543.6(a)(2), each petition must list each component in the antitheft system, and a diagram showing the location of each of those components within the vehicle. As required by section 543.6(a)(3), each petition must include an explanation of the means and process by which the device is activated and functions, including any aspect of the device designed to: (1) Facilitate or encourage its activation by motorists; (2) attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; (3) prevent defeating or circumventing the device by an unauthorized person attempting to enter a vehicle by means other than a key; (4) prevent the operation of a vehicle which an unauthorized person has entered using means other than a key; and (5) ensure the reliability and durability of the device.[2]

In addition to providing information about the antitheft device and its functionality, petitioners must also submit the reasons for the petitioner's belief that the antitheft device will be effective in reducing and deterring motor vehicle theft, including any theft data and other data that are available to the petitioner and form a basis for that belief,[3] and the reasons for the petitioner's belief that the agency should determine that the antitheft device is likely to be as effective as compliance with the parts-marking requirements of part 541 in reducing and deterring motor vehicle theft, including any statistical data that are available to the petitioner and form the basis for the petitioner's belief that a line of passenger motor vehicles equipped with the antitheft device is likely to have a theft rate equal to or less than that of passenger motor vehicles of the same, or a similar, line which have parts marked in compliance with part 541.[4]

The following sections describe Volkswagen's petition information provided pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention.* To the extent that specific information in Volkswagen's petition is subject to a properly filed confidentiality request, that information was not disclosed as part of this notice. *See* 49 CFR 512.20(a).

In a petition dated May 29, 2020, Volkswagen requested an exemption from the parts-marking requirements of the theft prevention standard for its Taos vehicle line beginning with MY 2022. Pursuant to section 543.6(a)(1), Volkswagen stated that the antitheft device described in its petition will be installed as standard equipment its Taos vehicles starting with MY 2022.[5]

In accordance with section 543.6(a)(2), Volkswagen provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its Taos vehicle line. Volkswagen stated that its fifth generation transponder-based electronic engine immobilizer antitheft device will be installed as standard equipment on the entire MY 2022 Taos vehicle line. Key components of the antitheft device will include an adapted ignition key (ID-transmitter or ''key fob''), instrument cluster, gateway (cluster to CAN bus, only routing function) and an engine control unit.

Volkswagen provided information on the reliability and durability of its proposed device as required by section 543.6(a)(3)(v). To ensure reliability and durability of the device, Volkswagen stated that the antitheft device has been tested for compliance with its corporate requirements, including those for electrical and electronic assemblies in motor vehicles related to performance requirements including electrical system temperature stability, mechanical integrity, electrical performance, electromagnetic compatibility (EMC), environmental compatibility and service life.

Volkswagen stated that its immobilizer device actively incorporates the power control unit into the evaluation and monitoring process. Volkswagen also stated that activation of its immobilizer device occurs automatically after the engine is switched off. Deactivation of the immobilizer device occurs when the ignition is turned on or the key fob is recognized by the immobilizer control unit. Specifically, when turning on the ignition on/off switch, the key transponder sends a fixed code to the immobilizer control unit. If this is identified as the correct code, a variable code is generated in the immobilizer control unit and sent to the transponder. Volkswagen stated that a secret arithmetic process is then started according to a set of specific equations and that a new variable code is generated every time the immobilizer goes through the secret computing process. The results of the computing process are evaluated in the control unit and if verified, the vehicle key is acknowledged as correct. The engine control unit then sends a variable code to the immobilizer control unit for

[2] 49 CFR 543.6(a)(3).

[3] 49 CFR 543.6(a)(4).

[4] 49 CFR 543.6(a)(5).

[5] Volkswagen also stated that it will offer an audible and visible alarm as optional equipment on its Taos vehicle line. Per 49 U.S.C. 33106 (b), manufacturers may petition NHTSA for an exemption ''for a line of passenger motor vehicles equipped *as standard equipment* with an antitheft device that [NHTSA] decides is likely to be as effective in reducing and deterring motor vehicle theft as compliance with'' the theft prevention standard (emphasis added). Per 49 U.S.C. 33106(a)(2), ''standard equipment'' means equipment already installed in a motor vehicle when it is delivered from the manufacturer and not an accessory or other item that the first purchaser customarily has the option to have installed. Therefore, for purposes of Volkswagen's petition, NHTSA is only considering the device equipped on the vehicle as standard equipment.

mutual identification. If all the data matches, the vehicle can be started.

In support of its belief that its antitheft device will be as effective as or more effective than the parts-marking requirement in reducing and deterring vehicle theft, and in accordance with 49 CFR 543.6(a)(5), Volkswagen provided data on the theft rate of similarly-sized vehicle lines that had been granted an exemption from the parts-marking requirement. Volkswagen also referenced the effectiveness of immobilizer devices installed on other vehicles for which NHTSA has granted exemptions. Specifically, Volkswagen referenced information from the Highway Loss Data Institute which showed that BMW vehicles experienced theft loss reductions resulting in a 73% decrease in relative claim frequency and a 78% lower average loss payment per claim for vehicles equipped with an immobilizer. Volkswagen also stated that the National Crime Information Center's (NCIC) theft data showed that there was a 70% reduction in theft experienced when comparing the MY 1987 Ford Mustang vehicle thefts (with immobilizers) to MY 1995 Ford Mustang vehicle thefts (without immobilizers).

III. Decision To Grant the Petition

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.8(b), the agency grants a petition for exemption from the parts-marking requirements of part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. As discussed above, in this case, Volkswagen's petition is granted under 49 U.S.C. 33106(d). Separately, NHTSA finds that Volkswagen has provided adequate reasons for its belief that the antitheft device for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard. This conclusion is based on the information the Volkswagen provided about its antitheft device. NHTSA believes, based on the supporting evidence submitted by Volkswagen, that the antitheft device described for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard.

The agency concludes that Volkswagen's antitheft device will provide the five types of performance features listed in section 543.6(a)(3): promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the theft prevention standard for a given model year. 49 CFR 543.8(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the theft prevention standard.

If Volkswagen decides not to use the exemption for its requested vehicle line, the manufacturer must formally notify the agency. If such a decision is made, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Volkswagen wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.8(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, section 543.10(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in the exemption.''

The agency wishes to minimize the administrative burden that section 543.10(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if Volkswagen contemplates making any changes, the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

For the foregoing reasons, the agency hereby grants in full Volkswagen's petition for exemption for the Taos vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with its MY 2022 vehicles.

Issued under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2021–07570 Filed 4–13–21; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petitions for Exemption From the Federal Motor Vehicle Theft Prevention Standard; General Motors, LLC

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petitions for exemption.

SUMMARY: This document grants in full the General Motors, LLC's (GM) petition for exemption from the Federal Motor Vehicle Theft Prevention Standard (Theft Prevention Standard) for its Chevrolet Trax line beginning in model year (MY) 2022. The petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with the 2022 model year.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard, Office of International Policy, Fuel Economy, and Consumer Programs, NHTSA, West Building, W43–439, NRM–310, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. Chapter 331, the Secretary of Transportation (and the National Highway Traffic Safety Administration (NHTSA) by delegation) is required to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. NHTSA promulgated regulations at Part 541 (Theft Prevention Standard) to require parts-marking for specified passenger motor vehicles and light trucks. Pursuant to 49 U.S.C. 33106, manufacturers that are subject to the parts-marking requirements may petition the Secretary of Transportation

for an exemption for a line of passenger motor vehicles equipped as standard equipment with an antitheft device that the Secretary decides is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements. In accordance with this statute, NHTSA promulgated 49 CFR part 543, which establishes the process through which manufacturers may seek an exemption from the Theft Prevention Standard.

49 CFR 543.5 provides general submission requirements for petitions and states that each manufacturer may petition NHTSA for an exemption of one vehicle line per model year. Among other requirements, manufacturers must identify whether the exemption is sought under section 543.6 or section 543.7. Under section 543.6, a manufacturer may request an exemption by providing specific information about the antitheft device, its capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements. Section 543.7 permits a manufacturer to request an exemption under a more streamlined process if the vehicle line is equipped with an antitheft device (an ''immobilizer'') as standard equipment that complies with one of the standards specified in that section.

Section 543.8 establishes requirements for processing petitions for exemption from the Theft Prevention Standard. As stated in section 543.8(a), NHTSA processes any complete exemption petition. If NHTSA receives an incomplete petition, NHTSA will notify the petitioner of the deficiencies. Once NHTSA receives a complete petition it will process it and, in accordance with section 543.8(b), will grant the petition if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541.

Section 543.8(c) requires NHTSA to issue its decision either to grant or to deny an exemption petition not later than 120 days after the date on which a complete petition is filed. If NHTSA does not make a decision within the 120-day period, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year.[1] Exemptions granted under Part 543 apply only to the vehicle line or lines that are subject to the grant and that are equipped with the antitheft device on which the line's exemption was based, and are effective for the model year beginning after the model year in which NHTSA issues the notice of exemption, unless the notice of exemption specifies a later year.

Sections 543.8(f) and (g) apply to the manner in which NHTSA's decisions on petitions are to be made known. Under section 543.8(f), if the petition is sought under section 543.6, NHTSA publishes a notice of its decision to grant or deny the exemption petition in the **Federal Register** and notifies the petitioner in writing. Under section 543.8(g), if the petition is sought under section 543.7, NHTSA notifies the petitioner in writing of the agency's decision to grant or deny the exemption petition.

This grant of petition for exemption considers GM's petition for its Chevrolet Trax vehicle line beginning in MY 2022.

I. Specific Petition Content Requirements Under 49 CFR 543.6

Pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention,* GM petitioned for an exemption for its specified vehicle line from the parts-marking requirements of the Theft Prevention Standard, beginning in MY 2022. GM petitioned under 49 CFR 543.6, *Petition: Specific content requirements,* which, as described above, requires manufacturers to provide specific information about the antitheft device installed as standard equipment on all vehicles in the line for which an exemption is sought, the antitheft device's capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements.

More specifically, section 543.6(a)(1) requires petitions to include a statement that an antitheft device will be installed as standard equipment on all vehicles in the line for which the exemption is sought. Under section 543.6(a)(2), each petition must list each component in the antitheft system, and include a diagram showing the location of each of those components within the vehicle. As required by section 543.6(a)(3), each petition must include an explanation of the means and process by which the device is activated and functions, including any aspect of the device designed to: (1) Facilitate or encourage its activation by motorists; (2) attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; (3) prevent defeating or circumventing the device by an unauthorized person attempting to enter a vehicle by means other than a key; (4) prevent the operation of a vehicle which an unauthorized person has entered using means other than a key; and (5) ensure the reliability and durability of the device.[2]

In addition to providing information about the antitheft device and its functionality, petitioners must also submit the reasons for their belief that the antitheft device will be effective in reducing and deterring motor vehicle theft, including any theft data and other data that are available to the petitioner and form a basis for that belief,[3] and the reasons for the petitioner's belief that the agency should determine that the antitheft device is likely to be as effective as compliance with the parts-marking requirements of Part 541 in reducing and deterring motor vehicle theft, including any statistical data that are available to the petitioner and form the basis for the petitioner's belief that a line of passenger motor vehicles equipped with the antitheft device is likely to have a theft rate equal to or less than that of passenger motor vehicles of the same, or a similar, line which have parts marked in compliance with Part 541.[4]

The following sections describe GM's petition information provided pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention.* To the extent that specific information in GM's petition is subject to a properly filed confidentiality request, that information will not be disclosed as part of this notice. *See* 49 CFR 512.20(a).

In a petition dated August 14, 2020, GM requested an exemption from the parts-marking requirements of the Theft Prevention Standard for its Chevrolet Trax vehicle line beginning with MY 2022. Pursuant to section 543.6(a)(1), GM stated that the antitheft device described in its petition, the PASS-Key III+, will be installed as standard equipment on its Chevrolet Trax vehicles starting with MY 2022. PASS-Key III+ is a transponder-based electronic engine immobilizer antitheft device.

In accordance with section 543.6(a)(2), GM provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its Chevrolet Trax vehicle line. Key components of the antitheft device include a PASS-Key III+ controller module, engine control module (ECM), an electronically-coded ignition key, a radio frequency (RF) receiver, an immobilizer exciter module, three low frequency antennas, and a

[1] 49 U.S.C. 33106(d).

[2] 49 CFR 543.6(a)(3).

[3] 49 CFR 543.6(a)(4).

[4] 49 CFR 543.6(a)(5).

passive antenna module and provided a diagram of the locations of the components.

GM stated that the PASS-Key III+ immobilizer device is designed to be active at all times without direct intervention by the vehicle operator. GM further stated that activation of the device occurs immediately after the ignition has been turned off and the key has been removed and deactivation of the antitheft device occurs automatically when the engine is started.

GM stated that the Chevrolet Trax vehicle line will be equipped with one of two ignition versions. Specifically, the Chevrolet Trax will be equipped with either a keyed or keyless ignition version of its PASS-Key III+ immobilizer antitheft device. GM stated that the ''keyed'' ignition version utilizes a special ignition key and decoder module and its electrical code must be sensed and properly decoded by the controller module before the vehicle can be operated. GM further stated that with the ''keyless'' ignition version, an electronic key fob performs normal remote keyless entry functions and communicates with the vehicle without direct owner intervention. Specifically, during operation of the vehicle, when the owner presses the engine start/stop switch, the vehicle transmits a randomly generated challenge and vehicle identifier within the passenger compartment of the vehicle via three low-frequency antennas, controlled by the passive antenna module. The electronic key receives the data and if the vehicle identifier matches that of the vehicle, the electronic key will calculate the response to the vehicle using the challenge and secret information shared between the key and the vehicle. The electronic key then transmits the response via a radio frequency channel to a vehicle mounted receiver, conveying the information to the PASS-Key III+ control module. The PASS-Key III+ control module compares the received response with an internally calculated response. If the values match, the device will allow the vehicle to enter functional modes and transmit a fixed code pre-release password to the engine controller over the serial data bus, and enable computation and communication of a response to any valid challenge received from the engine controller. If a valid key is not detected, the system will not transmit a fixed code pre-release password to the engine controller and fuel will not be delivered to the engine and the starter will not be enabled, so the vehicle will be immobilized.

GM provided information on the reliability and durability of its proposed device as required by section 543.6(a)(3)(v). To ensure reliability and durability of the device, GM followed its own standards in assessing reliability and conducted tests to validate the integrity, durability and reliability of the PASS-Key III+ device, including tests for high temperature storage, low temperature storage, thermal shock, humidity, frost, salt fog, flammability and others. GM further stated that the design and assembly processes of the PASS-Key III+ subsystem and components are validated for 10 years of vehicle life and 150,000 miles of performance.

In support of its belief that its antitheft device will be as effective as or more effective than the parts-marking requirement in reducing and deterring vehicle theft, and in accordance with 49 CFR 543.6(a)(5), GM referenced data provided by the American Automobile Manufacturers Association (AAMA) in support of the effectiveness of GM's PASS-Key devices in reducing and deterring motor vehicle theft, and stated that the PASS-Key III+ device has been designed to enhance the functionality and theft protection provided by its first, second and third generation PASS-Key, PASS-Key II, and PASS-Key III devices. Specifically, GM stated that data which provide the basis for GM's confidence that the PASS-Key III+ system will be effective in reducing and deterring motor vehicle theft are contained in the response of the American Automobile Manufacturers Association (AAMA) to Docket 97–042; Notice I (NHTSA Request for Comments on its preliminary Report to Congress on the effects of the Anti Car Theft Act of 1992 and the Motor Vehicle Theft Law Enforcement Act of 1984). In the Report to Congress, AAMA stated the more recent antitheft systems are more effective in reducing auto theft.

GM also stated that theft rate data have indicated a decline in theft rates for vehicle lines equipped with comparable devices that have received full exemptions from the parts-marking requirements. GM stated that the theft rate data, as provided by the Federal Bureau of Investigation's National Crime Information Center (NCIC) and compiled by the agency, show that theft rates are lower for exempted GM models equipped with the PASS-Key-like systems than the theft rates for earlier models with similar appearance and construction that were parts-marked. Based on the performance of the PASS-Key, PASS-Key II, and PASS-Key III devices on other GM models, and the advanced technology utilized in PASS-Key III+, GM believes that the PASS-Key III+ device will be more effective in deterring theft than the parts-marking requirements of 49 CFR part 541.

III. Decision To Grant the Petition

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.8(b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds GM has provided adequate reasons for its belief that the antitheft device for the Chevrolet Trax vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. This conclusion is based on the information the manufacturer provided about its antitheft device. NHTSA believes, based on the supporting evidence submitted by the manufacturer, that the antitheft device described for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

The agency concludes that GM's antitheft device will provide four of the five types of performance features listed in section 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.8(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If GM decides not to use the exemption for its requested vehicle line, the manufacturer must formally notify the agency. If such a decision is made, the line must be fully marked as required by 49 CFR 541.5 and 541.6

(marking of major component parts and replacement parts).

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.8(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, section 543.10(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in the exemption.''

The agency wishes to minimize the administrative burden that section 543.10(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if GM contemplates making any changes, the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

For the foregoing reasons, the agency hereby grants in full GM's petition for exemption for the Chevrolet Trax vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with its MY 2022 vehicles.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2021–07569 Filed 4–13–21; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

[Docket No: OST–2021–0038]

Agency Request for Emergency Approval of an Information Collection of Information Associated With the Aviation Manufacturing Jobs Protection (AMJP) Program

AGENCY: U.S. Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Department of Transportation (DOT) provides notice that it will submit an information collection request (ICR) to the Office of Management and Budget (OMB) for emergency approval of a proposed information collection. DOT requests that OMB authorize the collection of information on or before May 15, 2021, for 180 days after the date of approval by OMB. Upon receiving the requested six-month emergency approval by OMB, DOT will follow the normal PRA procedures to obtain extended approval for this proposed information collection. The purpose of this collection is to enable eligible business entities to apply for payroll assistance under the ''Aviation Manufacturing Jobs Protection'' (AMJP) program, established by the ''American Rescue Plan Act of 2021'' (ARPA), which was enacted on March 11, 2021. DOT is requesting emergency approval due to the urgency of making the associated funds available to business entities that meet the eligibility requirements under the law. The continued viability of these business entities is crucial to supporting the aviation industry and economic recovery in the United States. Because ARPA requires DOT to reduce funding on a *pro rata* basis if eligible requests exceed available funds, DOT must identify the full universe of eligible businesses and the magnitude of their funding requests before issuing the first agreement. The statutory requirements of the AJMP also establish a strict six-month timeframe during which DOT must enter into payroll support agreements with eligible businesses.

DATES: Comments should be submitted as soon as possible upon publication of this notice in the **Federal Register**.

ADDRESSES: Comments and questions should be directed to the Office of Information and Regulatory Affairs (OIRA), Attn: OST OMB Desk Officer, 725 17th Street NW, Washington, DC 20503. Comments and questions about the ICR identified below may be transmitted electronically to OIRA at *oira_submissions@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Information related to this ICR, including applicable supporting documentation may be obtained by contacting Alexus Jenkins-Reid in the Office of the Secretary of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, via telephone at (202) 366–4594, or via email at *AMJP@dot.gov.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; as amended) and 5 CFR part 1320 require each Federal agency to obtain OMB approval to initiate an information collection activity. DOT is seeking OMB approval for the following DOT information collection activity:

OMB Control Number: 2106–NEW.

Title: Aviation Manufacturing Jobs Protection (AMJP) program.

Form Numbers: New collection.

Type of Review: Emergency approval of information collection.

Expected Number of Respondents: 4,900.

Frequency: One-time application, to be followed by disbursement requests and closeout.

Estimated Average Burden per Response: 28 hours (initial application, 12 hours; monthly disbursement request, 2 hours each for 6 months; and closeout documentation, 4 hours).

Estimated Total Annual Burden: 137,200.

Abstract: On March 11, 2021, the ''American Rescue Plan Act of 2021'' (ARPA), Public Law (Pub. L.) 117–2, was enacted. Sections 7201 and 7202 establish the ''Aviation Manufacturing Jobs Protection'' (AMJP) program. The stated purpose of the program is ''to provide public contributions to supplement compensation of an eligible employee group'' (which is defined in the statute), by entering into agreements with qualifying business entities to pay up to half of the payroll costs for that group of employees for up to six months, in return for several commitments, including a commitment that the company will not involuntarily furlough or lay off employees within that group. Individual employees (including contract employees) are not eligible to apply for assistance under this program.

Application for assistance under the AMJP is voluntary. No business is required to apply. To be eligible, however, businesses must meet all the requirements set forth in the law. Therefore, DOT must collect certain information from applicants to determine eligibility. DOT must also verify the accuracy of specific payment requests from approved applicants, in accordance with other laws and regulations governing Federal financial assistance programs, including (but not limited to) the Anti-Deficiency Act, the Federal Funding Accountability and Transparency Act (FFATA), the Payment Integrity Information Act of 2019, and 2 CFR part 200, among others.

The ARPA requires DOT to reduce funding on a *pro rata* basis if eligible requests exceed available funds. Therefore, DOT will conduct a single-round, expedited application process to identify all eligible requests before beginning the award process.

Accordingly, DOT is developing a process and system that will enable

businesses to apply for financial assistance under the AMJP. DOT anticipates using an online, web-based system to collect the following information:

- Legal name of the applicant (*i.e.,* the legal name of the business entity), as well as any other identities under which the applicant may be doing business.
- Address, telephone, and email contact information for the applicant.
- Legal authority under which the applicant is established.
- Name and title of the authorized representative of the applicant (who will attest to the required certifications).
- DOT may also require the identity of external parties involved in preparation of the application, including outside accountants, attorneys, or auditors who may be assisting the business entity that is applying for assistance under this program.
- The specific statutory criteria that the applicant meets for eligibility under this program. The statute defines eligible applicants to include a corporation, firm, or other business entity that ''(i) actively manufactures an aircraft, aircraft engine, propeller, or a component, part, or systems of an aircraft or aircraft engine under a Federal Aviation Administration production approval; (ii) holds a certificate issued under part 145 of title 14, Code of Federal Regulations, for maintenance, repair, and overhaul of aircraft, aircraft engines, components, or propellers; or (iii) operates a process certified to SAE AS9100 [1] related to the design, development, or provision of an aviation product or service, including a part, component, or assembly.'' Accordingly, DOT will require the applicant to identify which of these categories they meet, and how. DOT may also require applicants to provide supporting documentation, including reference numbers and copies of certificates or authorizations issued by the Federal Aviation Administration or by SAE.
- Location where the applicant was legally established, created, or organized to do business. This information and supporting documentation will be required to demonstrate how the applicant meets the statutory requirement to be ''established, created, or organized in the United States or under the laws of the United States.''
- Other identification numbers, including but not limited to the Employer/Taxpayer Identification Number (EIN/TIN), Data Universal Numbering System (DUNS) number, Unique Entity Identifier under 2 CFR part 25, etc. All applicants will be required to have pre-registered with the System for Award Management (SAM) at *https://sam.gov/SAM/.*
- Description of the applicant's business operations, in sufficient detail to demonstrate how the applicant meets the statutory requirement to have ''significant operations in, and a majority of its employees engaged in aviation manufacturing activities and services, or maintenance, repair, and overhaul activities and services based in the United States.'' This will include a listing of all business locations, and the number of employees (and the percentage of their time) engaged in aviation-related versus other business activities at each location, as of a specific date that DOT will identify in a subsequent program announcement.
- Details sufficient to demonstrate how the applicant meets the requirement to have ''involuntarily furloughed or laid off at least 10 percent of its workforce in 2020 as compared to 2019 or has experienced at least a 15 percent decline in 2020 revenues as compared to 2019.'' The applicant will be required to provide either aggregate numbers of personnel as of April 1, 2019 and April 1, 2020, or total operating revenue figures for the applicant's fiscal years ending 2019 and 2020.
- Certification that the applicant has not received a credit against applicable employment taxes under section 2301 of the CARES Act (26 U.S.C. 3111 note) for the immediately preceding calendar quarter ending before such agreement is entered into, or financial assistance under section 4113 of the CARES Act (15 U.S.C. 9073) (providing payroll support to air carriers and contractors), and is not currently expending financial assistance under the paycheck protection program established under section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)), as of the date the employer submits an application under the AMJP. Although DOT may verify the accuracy of these certifications, including the possibility of a risk-based approach to verification, applicants are legally responsible for ensuring the accuracy of these certifications.
- Definition of the applicant's ''eligible employee group,'' as defined in the statute, identifying the specific job categories and numbers of personnel in each category.[2]
- The actual aggregate total cost of compensation for the eligible employee group for the six-month period ending March 31, 2021. DOT requires this information to calculate the potentially eligible amount of financial assistance under the AMJP (subject to *pro rata* reduction if necessary due to availability of funds). DOT anticipates requiring a breakdown of the compensation costs (*e.g.,* aggregate base salaries versus other major benefit categories, including but not limited to medical benefits paid by the employer, paid leave, insurance premiums paid by the employer, employer match on employee retirement contributions, etc.). Applicants will be required to provide supporting documentation in sufficient detail to substantiate the preceding aggregate costs, but specifically excluding any Personally Identifiable Information (PII) for any individual employees. This may include financial reports and redacted payroll reports, or such additional supporting documentation as DOT may require.
- Whether the applicant business entity is currently engaged in any legal proceeding that could jeopardize its ability to fulfill the legal commitments required in statute as conditions for receiving funds under the AMJP. Examples of such proceedings could include (but are not limited to) any process related to the United States Bankruptcy Code, potential merger or acquisition discussions, or current litigation against the applicant. The application system will request that applicants identify any such issues at a high level, but avoid including unnecessary details in the application.
- Whether the applicant is delinquent on any debt to any Federal agency, along with supporting details.
- Certification by the applicant that they can and will enter into a legal agreement with DOT, that will require the applicant to (1) provide the private contribution (which means the remainder of the total compensation costs associated with the eligible employee group that is not funded by assistance under the AMJP); and (2) not conduct any involuntary layoffs, furloughs, or reductions in pay rates or benefits for the eligible employee group

[1] SAE refers to the Society of Automotive Engineers, whose membership includes aeronautical engineers. For information about SAE AS9100, see *https://www.sae.org/standards/content/as9100/.*

[2] The statutory definition of the ''eligible employee group'' is the portion of an employer's United States workforce that does not exceed 25 percent of the employer's total United States workforce as of April 1, 2020; contains only employees with a total compensation level of $200,000 or less per year; and is engaged in aviation manufacturing activities and services, or maintenance, repair, and overhaul activities and services.

during the term of the agreement with DOT.

• A sworn certification as to the complete and accurate nature of all information provided, including all supporting documentation, subject to civil or criminal penalties. The specific certification language will include: ''I certify under penalty of perjury that the information and certifications provided in the application and its attachments are true and correct. WARNING: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil penalties. (18 U.S.C. 287, 1001; 31 U.S.C. 3729, 3802).''

• After DOT determines eligibility and enters into an agreement with the applicant (referred to hereafter as ''the recipient''), DOT may also require the recipient to provide the actual aggregate total cost of compensation for the eligible employee group during the period of the agreement with DOT, if DOT determines it is necessary in order to review and approve actual disbursements pursuant to the agreement. Recipients will be required to provide supporting documentation in sufficient detail to substantiate the actual costs, specifically excluding any Personally Identifiable Information (PII) for any individual employees.

• Recipients will also be required to provide additional supporting information and certifications in support of disbursement requests.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and the American Rescue Plan Act of 2021 (Pub. L. 117–2).

Signed in Washington, DC on April 7, 2021.

Brian Elliott Black,

Special Program Development Lead, U.S. Department of Transportation.

[FR Doc. 2021–07468 Filed 4–13–21; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0677]

Agency Information Collection Activity: Contract for Training and Employment

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 14, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0677'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0677'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 501(a) and 38 U.S.C. 3104.

Title: Contract for Training and Employment (Chapter 31, Title 38, U.S. Code).

OMB Control Number: 2900–0677.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1903 is used to gather the necessary information to develop formal training agreements with an institution, training establishment, or employer for training and rehabilitation under 38 U.S.C. Chapter 31. Additionally, the information is used to authorize a claimant's participation in a program with a training vendor or facility under 38 U.S.C 3104.

Affected Public: Private Sector.

Estimated Annual Burden: 400 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,600.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer (Alt), Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–07578 Filed 4–13–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0024]

Agency Information Collection Activity: Insurance Deduction Authorization

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 14, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to

nancy.kessinger@va.gov. Please refer to ''OMB Control No. 2900–0024'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0024'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Insurance Deduction Authorization, VA Form 29–888.

OMB Control Number: 2900–0024.

Type of Review: Revision of a previously approved collection.

Abstract: These forms are used by veterans to authorize the Department of Veterans Affairs (VA) to make deductions from benefit payments to pay premiums, loans and/or liens on his/her insurance contract. The information requested is authorized by law, 38 CFR 8.8.

Affected Public: Individuals and households.

Estimated Annual Burden: 622 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,732.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–07587 Filed 4–13–21; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 418 and 484

Medicare Program; FY 2022 Hospice Wage Index and Payment Rate Update, Hospice Conditions of Participation Updates, Hospice and Home Health Quality Reporting Program Requirements; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 418 and 484

[CMS–1754–P]

RIN 0938–AU41

Medicare Program; FY 2022 Hospice Wage Index and Payment Rate Update, Hospice Conditions of Participation Updates, Hospice and Home Health Quality Reporting Program Requirements

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes updates to the hospice wage index, payment rates, and aggregate cap amount for Fiscal Year 2022. This rule proposes changes to the labor shares of the hospice payment rates, proposes clarifying regulations text changes to the election statement addendum that was implemented on October 1, 2020, includes information on hospice utilization trends and solicits comments regarding hospice utilization and spending patterns. In addition, this rule proposes to make permanent selected regulatory blanket waivers that were issued to Medicare-participating hospice agencies during the COVID–19 public health emergency and updates the hospice conditions of participation. The proposed rule would update the Hospice Quality Reporting Program. The proposed rule requests information on advancing to digital quality measurement, the use of Fast Healthcare Interoperability Resources, addresses the White House Executive Order related to health equity in the Hospice Quality Reporting Program and provides updates to advancing Health Information Exchange. Finally, this rule proposes changes beginning with the January 2022 public reporting for the Home Health Quality Reporting Program to address exceptions related to the COVID–19 public health emergency.

DATES: To be assured consideration, comments must be received at one of the addresses provided below by June 7, 2021.

ADDRESSES: In commenting, refer to file code CMS–1754–P.

Comments, including mass comment submissions, must be submitted in one of the following three ways (choose *only one* of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1754–P, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1754–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

For general questions about hospice payment policy, send your inquiry via email to: *hospicepolicy@cms.hhs.gov.*

For questions regarding the CAHPS® Hospice Survey, contact Debra Dean-Whittaker at (410) 786–0848.

For questions regarding the hospice conditions of participation (CoPs), contact Mary Rossi-Coajou at (410)786–6051.

For questions regarding the home health public reporting, contact Charles Padgett (410) 786–2811.

For questions regarding the hospice quality reporting program, contact Cindy Massuda at (410) 786–0652.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

Wage index addenda will be available only through the internet on our website at: (*https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Hospice-Wage-Index.html.*)

I. Executive Summary

A. Purpose

This rule proposes updates to the hospice wage index, payment rates, and cap amount for Fiscal Year (FY) 2022 as required under section 1814(i) of the Social Security Act (the Act). In addition, this rule proposes to rebase the labor shares of the hospice payment rates and proposes clarifying regulations text changes to the election statement addendum requirements finalized in the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38484). This rule also includes information on hospice utilization trends and solicits comments regarding hospice utilization and spending patterns. In addition, this rule proposes to make permanent selected regulatory blanket waivers for hospice agencies during the COVID–19 Public Health Emergency (PHE) and proposes revisions to the hospice conditions of participation (CoPs). This rule proposes changes to the Hospice Quality Reporting Program (HQRP), requests information on advancing to digital quality measurement and the use of Fast Healthcare Interoperability Resources (FHIR), addresses the White House Executive Order related to health equity in the HQRP and provides updates on advancing the Health Information Exchange. Finally, this rule proposes changes to the Home Health Quality Reporting Program (HH QRP) to address the January 2022 refresh in accordance with sections 1895(b)(3)(B)(v)(III) and 1899(B)(f) of the Act.

B. Summary of the Major Provisions

Section III.A of this proposed rule includes data analysis on historical hospice utilization trends. The analysis includes data on the number of beneficiaries using the hospice benefit, live discharges, reported diagnoses on hospice claims, Medicare hospice spending, and Parts A, B and D non-hospice spending during a hospice election. In this section, we also solicit comments from the public, including hospice providers as well as patients and advocates, regarding the presented analysis on hospice utilization and spending patterns. We also include questions related to non-hospice spending during a hospice election.

Section III.B of this proposed rule proposes to rebase and revise the labor shares for continuous home care (CHC), routine home care (RHC), inpatient respite care (IRC), and general inpatient care (GIP) using 2018 Medicare cost report (MCR) data for freestanding hospice facilities.

Section III.C proposes updates to the hospice wage index and makes the application of the updated wage data budget neutral for all four levels of hospice care. In section III.C of this rule, we also discuss the proposed FY 2022 hospice payment update percentage of 2.3 percent, updates to the hospice payment rates, as well as the updates to

the hospice cap amount for FY 2022 by the hospice payment update percentage of 2.3 percent.

Section III.D proposes clarifying regulations text changes regarding the election statement addendum requirements that were finalized in the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38484).

Section III.E proposes to make permanent selected regulatory blanket waivers that were issued to Medicare-participating hospice agencies during the COVID–19 PHE. We are proposing to revise hospice aide requirements to allow the use of the pseudo-patient for conducting hospice aide competency evaluations. We are also proposing to revise the provisions at § 418.76(h)(1)(iii) to state that if a hospice verifies during an on-site visit the finding of a supervising nurse regarding an area of concern in the performance of a hospice aide, the hospice must conduct and the hospice aide must complete a competency evaluation related to the deficient and related skill(s), in accordance with § 418.76(c).

In section III.F of this rule, we discuss proposals to the HQRP including the addition of claims-based Hospice Care Index (HCI) measure, and Hospice Visits in the Last Days of Life (HVLDL) measure for public reporting; removal of the seven Hospice Item Set (HIS) measures because a more broadly applicable measure, the NQF 3235 HIS Comprehensive Assessment Measure for the particular topic is available and already publicly reported; and further development of, Hospice Outcome and Patient Evaluation (HOPE) assessment instrument. We also provide updates on the public reporting change for one refresh cycle to report less than the standard quarters of data due to the COVID–19 PHE exemptions and adding the Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Hospice Survey Star ratings. Additionally, there are requests for information (RFI) on advancing to digital quality measurement and the use of Fast Healthcare Interoperability Resources (FHIR) and on addressing the White House Executive Order related to health equity in the HQRP. In addition, this rule provides updates to advancing Health Information Exchange (HIE). The Department of Health and Human Services (HHS) has a number of initiatives designed to encourage and support the adoption of interoperable health information technology and to promote nationwide health information exchange to improve health care and patient access to their health information.

Finally, in section III.G of this rule, we are proposing changes to the HH QRP to establish that, beginning with the January 2022 through the July 2024 public reporting refresh cycle, we will report fewer quarters of data due to COVID–19 PHE exceptions granted on March 27, 2020. We include this Home Health proposal in this rule because we plan to resume public reporting for the HH QRP with the January 2022 refresh of Care Compare. In order to accommodate the exception of 2020 Q1 and Q2 data, we are proposing to resume public reporting using 3 out of 4 quarters of data for the January 2022 refresh. In order to finalize this proposal in time to release the required preview report related to the refresh, which we release 3 months prior to any given refresh (October 2021), we need the rule containing this proposal to finalize by October 2021.

C. Summary of Impacts

The overall economic impact of this proposed rule is estimated to be $530 million in increased payments to hospices for FY 2022.

II. Background

A. Hospice Care

Hospice care is a comprehensive, holistic approach to treatment that recognizes the impending death of a terminally ill individual and warrants a change in the focus from curative care to palliative care for relief of pain and for symptom management. Medicare regulations define ''palliative care'' as patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice (42 CFR 418.3). Palliative care is at the core of hospice philosophy and care practices, and is a critical component of the Medicare hospice benefit.

The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, nursing, social, psychological, emotional, and spiritual services through a collaboration of professionals and other caregivers, with the goal of making the beneficiary as physically and emotionally comfortable as possible. Hospice is compassionate beneficiary and family/caregiver-centered care for those who are terminally ill.

As referenced in our regulations at § 418.22(b)(1), to be eligible for Medicare hospice services, the patient's attending physician (if any) and the hospice medical director must certify that the individual is ''terminally ill,'' as defined in section 1861(dd)(3)(A) of the Act and our regulations at § 418.3; that is, the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course. The regulations at § 418.22(b)(2) require that clinical information and other documentation that support the medical prognosis accompany the certification and be filed in the medical record with it and those at § 418.22(b)(3) require that the certification and recertification forms include a brief narrative explanation of the clinical findings that support a life expectancy of 6 months or less.

Under the Medicare hospice benefit, the election of hospice care is a patient choice and once a terminally ill patient elects to receive hospice care, a hospice interdisciplinary group is essential in the seamless provision of primarily home-based services. The hospice interdisciplinary group works with the beneficiary, family, and caregivers to develop a coordinated, comprehensive care plan; reduce unnecessary diagnostics or ineffective therapies; and maintain ongoing communication with individuals and their families about changes in their condition. The beneficiary's care plan will shift over time to meet the changing needs of the individual, family, and caregiver(s) as the individual approaches the end of life.

If, in the judgment of the hospice interdisciplinary team, which includes the hospice physician, the patient's symptoms cannot be effectively managed at home, then the patient is eligible for general inpatient care (GIP), a more medically intense level of care. GIP must be provided in a Medicare-certified hospice freestanding facility, skilled nursing facility, or hospital. GIP is provided to ensure that any new or worsening symptoms are intensively addressed so that the beneficiary can return to his or her home and continue to receive routine home care. Limited, short-term, intermittent, inpatient respite care (IRC) is also available because of the absence or need for relief of the family or other caregivers. Additionally, an individual can receive continuous home care (CHC) during a period of crisis in which an individual requires continuous care to achieve palliation or management of acute medical symptoms so that the

individual can remain at home. Continuous home care may be covered for as much as 24 hours a day, and these periods must be predominantly nursing care, in accordance with the regulations at § 418.204. A minimum of 8 hours of nursing care, or nursing and aide care, must be furnished on a particular day to qualify for the continuous home care rate (§ 418.302(e)(4)).

Hospices must comply with applicable civil rights laws,[1] including section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, under which covered entities must take appropriate steps to ensure effective communication with patients and patient care representatives with disabilities, including the provisions of auxiliary aids and services. Additionally, they must take reasonable steps to ensure meaningful access for individuals with limited English proficiency, consistent with Title VI of the Civil Rights Act of 1964. Further information about these requirements may be found at: *http://www.hhs.gov/ocr/civilrights.*

B. Services Covered by the Medicare Hospice Benefit

Coverage under the Medicare hospice benefit requires that hospice services must be reasonable and necessary for the palliation and management of the terminal illness and related conditions. Section 1861(dd)(1) of the Act establishes the services that are to be rendered by a Medicare-certified hospice program. These covered services include: Nursing care; physical therapy; occupational therapy; speech-language pathology therapy; medical social services; home health aide services (called hospice aide services); physician services; homemaker services; medical supplies (including drugs and biologicals); medical appliances; counseling services (including dietary counseling); short-term inpatient care in a hospital, nursing facility, or hospice inpatient facility (including both respite care and procedures necessary for pain control and acute or chronic symptom management); continuous home care during periods of crisis, and only as necessary to maintain the terminally ill individual at home; and any other item or service which is specified in the plan of care and for which payment may otherwise be made under Medicare, in accordance with Title XVIII of the Act.

Section 1814(a)(7)(B) of the Act requires that a written plan for providing hospice care to a beneficiary who is a hospice patient be established before care is provided by, or under arrangements made by, the hospice program; and that the written plan be periodically reviewed by the beneficiary's attending physician (if any), the hospice medical director, and an interdisciplinary group (section 1861(dd)(2)(B) of the Act). The services offered under the Medicare hospice benefit must be available to beneficiaries as needed, 24 hours a day, 7 days a week (section 1861(dd)(2)(A)(i) of the Act).

Upon the implementation of the hospice benefit, the Congress also expected hospices to continue to use volunteer services, though Medicare does not pay for these volunteer services (section 1861(dd)(2)(E) of the Act). As stated in the FY 1983 Hospice Wage Index and Rate Update proposed rule (48 FR 38149), the hospice must have an interdisciplinary group composed of paid hospice employees as well as hospice volunteers, and that ''the hospice benefit and the resulting Medicare reimbursement is not intended to diminish the voluntary spirit of hospices.'' This expectation supports the hospice philosophy of community based, holistic, comprehensive, and compassionate end of life care.

C. Medicare Payment for Hospice Care

Sections 1812(d), 1813(a)(4), 1814(a)(7), 1814(i), and 1861(dd) of the Act, and the regulations in 42 CFR part 418, establish eligibility requirements, payment standards and procedures; define covered services; and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Part 418, subpart G, provides for a per diem payment based on one of four prospectively-determined rate categories of hospice care (RHC, CHC, IRC, and GIP), based on each day a qualified Medicare beneficiary is under hospice care (once the individual has elected). This per diem payment is meant to cover all of the hospice services and items needed to manage the beneficiary's care, as required by section 1861(dd)(1) of the Act.

While payments made to hospices is to cover all items, services, and drugs for the palliation and management of the terminal illness and related conditions, Federal funds cannot be used for the prohibited activities, even in the context of a per diem payment. While recent news reports [2] have brought to light the potential role hospices could play in medical aid in dying (MAID) where such practices have been legalized in certain states, we wish to remind hospices that The Assisted Suicide Funding Restriction Act of 1997 (Pub. L. 105–12) prohibits the use of Federal funds to provide or pay for any health care item or service or health benefit coverage for the purpose of causing, or assisting to cause, the death of any individual including mercy killing, euthanasia, or assisted suicide. However, the prohibition does not pertain to the provision of an item or service for the purpose of alleviating pain or discomfort, even if such use may increase the risk of death, so long as the item or service is not furnished for the specific purpose of causing or accelerating death.

1. Omnibus Budget Reconciliation Act of 1989

Section 6005(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) amended section 1814(i)(1)(C) of the Act and provided changes in the methodology concerning updating the daily payment rates based on the hospital market basket percentage increase applied to the payment rates in effect during the previous Federal fiscal year.

2. Balanced Budget Act of 1997

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) established that updates to the hospice payment rates beginning FY 2002 and subsequent FYs be the hospital market basket percentage increase for the FY. Section 4442 of the BBA amended section 1814(i)(2) of the Act, effective for services furnished on or after October 1, 1997, to require that hospices submit claims for payment for hospice care furnished in an individual's home only on the basis of the geographic location at which the service is furnished. Previously, local wage index values were applied based on the geographic location of the hospice provider, regardless of where the hospice care was furnished. Section 4443 of the BBA amended sections 1812(a)(4) and 1812(d)(1) of the Act to provide for hospice benefit periods of two 90-day periods, followed by an unlimited number of 60-day periods.

3. FY 1998 Hospice Wage Index Final Rule

The FY 1998 Hospice Wage Index final rule (62 FR 42860), implemented a new methodology for calculating the

[1] Hospices are also subject to additional Federal civil rights laws, including the Age Discrimination Act, Section 1557 of the Affordable Care Act, and conscience and religious freedom laws.

[2] Nelson, R., Should Medical Aid in Dying Be Part of Hospice Care? Medscape Nurses. February 26, 2020. *https://www.medscape.com/viewarticle/925769#vp_1.*

hospice wage index and instituted an annual Budget Neutrality Adjustment Factor (BNAF) so aggregate Medicare payments to hospices would remain budget neutral to payments calculated using the 1983 wage index.

4. FY 2010 Hospice Wage Index Final Rule

The FY 2010 Hospice Wage Index and Rate Update final rule (74 FR 39384) instituted an incremental 7-year phase-out of the BNAF beginning in FY 2010 through FY 2016. The BNAF phase-out reduced the amount of the BNAF increase applied to the hospice wage index value, but was not a reduction in the hospice wage index value itself or in the hospice payment rates.

5. The Affordable Care Act

Starting with FY 2013 (and in subsequent FYs), the market basket percentage update under the hospice payment system referenced in sections 1814(i)(1)(C)(ii)(VII) and 1814(i)(1)(C)(iii) of the Act are subject to annual reductions related to changes in economy-wide productivity, as specified in section 1814(i)(1)(C)(iv) of the Act.

In addition, sections 1814(i)(5)(A) through (C) of the Act, as added by section 3132(a) of the Patient Protection and Affordable Care Act (PPACA) (Pub. L. 111–148), required hospices to begin submitting quality data, based on measures specified by the Secretary of the Department of Health and Human Services (the Secretary), for FY 2014 and subsequent FYs. Since FY 2014, hospices that fail to report quality data have their market basket percentage increase reduced by 2 percentage points. Note that with the passage of the Consolidated Appropriations Act, 2021 (hereafter referred to as CAA 2021) (Pub. L. 116–260), the reduction changes to 4 percentage points beginning in FY 2024.

Section 1814(a)(7)(D)(i) of the Act, as added by section 3132(b)(2) of the PPACA, required, effective January 1, 2011, that a hospice physician or nurse practitioner have a face-to-face encounter with the beneficiary to determine continued eligibility of the beneficiary's hospice care prior to the 180th day recertification and each subsequent recertification, and to attest that such visit took place. When implementing this provision, the Centers for Medicare & Medicaid Services (CMS) finalized in the FY 2011 Hospice Wage Index final rule (75 FR 70435) that the 180th day recertification and subsequent recertifications would correspond to the beneficiary's third or subsequent benefit periods. Further, section 1814(i)(6) of the Act, as added by section 3132(a)(1)(B) of the PPACA, authorized the Secretary to collect additional data and information determined appropriate to revise payments for hospice care and other purposes. The types of data and information suggested in the PPACA could capture accurate resource utilization, which could be collected on claims, cost reports, and possibly other mechanisms, as the Secretary determined to be appropriate. The data collected could be used to revise the methodology for determining the payment rates for RHC and other services included in hospice care, no earlier than October 1, 2013, as described in section 1814(i)(6)(D) of the Act. In addition, CMS was required to consult with hospice programs and the Medicare Payment Advisory Commission (MedPAC) regarding additional data collection and payment revision options.

6. FY 2012 Hospice Wage Index Final Rule

In the FY 2012 Hospice Wage Index final rule (76 FR 47308 through 47314) it was announced that beginning in 2012, the hospice aggregate cap would be calculated using the patient-by-patient proportional methodology, within certain limits. Existing hospices had the option of having their cap calculated through the original streamlined methodology, also within certain limits. As of FY 2012, new hospices have their cap determinations calculated using the patient-by-patient proportional methodology. If a hospice's total Medicare payments for the cap year exceed the hospice aggregate cap, then the hospice must repay the excess back to Medicare.

7. IMPACT Act of 2014

The Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act) (Pub. L. 113–185) became law on October 6, 2014. Section 3(a) of the IMPACT Act mandated that all Medicare certified hospices be surveyed every 3 years beginning April 6, 2015 and ending September 30, 2025. In addition, section 3(c) of the IMPACT Act requires medical review of hospice cases involving beneficiaries receiving more than 180 days of care in select hospices that show a preponderance of such patients; section 3(d) of the IMPACT Act contains a new provision mandating that the cap amount for accounting years that end after September 30, 2016, and before October 1, 2025 be updated by the hospice payment percentage update rather than using the consumer price index for urban consumers (CPI–U) for medical care expenditures.

8. FY 2015 Hospice Wage Index and Payment Rate Update Final Rule

The FY 2015 Hospice Wage Index and Rate Update final rule (79 FR 50452) finalized a requirement that the Notice of Election (NOE) be filed within 5 calendar days after the effective date of hospice election. If the NOE is filed beyond this 5-day period, hospice providers are liable for the services furnished during the days from the effective date of hospice election to the date of NOE filing (79 FR 50474). As with the NOE, the claims processing system must be notified of a beneficiary's discharge from hospice or hospice benefit revocation within 5 calendar days after the effective date of the discharge/revocation (unless the hospice has already filed a final claim) through the submission of a final claim or a Notice of Termination or Revocation (NOTR).

The FY 2015 Hospice Wage Index and Rate Update final rule (79 FR 50479) also finalized a requirement that the election form include the beneficiary's choice of attending physician and that the beneficiary provide the hospice with a signed document when he or she chooses to change attending physicians.

In addition, the FY 2015 Hospice Wage Index and Rate Update final rule (79 FR 50496) provided background, described eligibility criteria, identified survey respondents, and otherwise implemented the Hospice Experience of Care Survey for informal caregivers. Hospice providers were required to begin using this survey for hospice patients as of 2015.

Finally, the FY 2015 Hospice Wage Index and Rate Update final rule required providers to complete their aggregate cap determination not sooner than 3 months after the end of the cap year, and not later than 5 months after, and remit any overpayments. Those hospices that fail to submit their aggregate cap determinations on a timely basis will have their payments suspended until the determination is completed and received by the Medicare contractor (79 FR 50503).

9. FY 2016 Hospice Wage Index and Payment Rate Update Final Rule

In the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47142), CMS finalized two different payment rates for RHC: A higher per diem base payment rate for the first 60 days of hospice care and a reduced per diem base payment rate for subsequent days of hospice care. CMS also finalized a service intensity add-on (SIA)

payment payable for certain services during the last 7 days of the beneficiary's life. A service intensity add-on payment will be made for the social worker visits and nursing visits provided by a registered nurse (RN), when provided during routine home care in the last 7 days of life. The SIA payment is in addition to the routine home care rate. The SIA payment is provided for visits of a minimum of 15 minutes and a maximum of 4 hours per day (80 FR 47172).

In addition to the hospice payment reform changes discussed, the FY 2016 Hospice Wage Index and Rate Update final rule implemented changes mandated by the IMPACT Act, in which the cap amount for accounting years that end after September 30, 2016 and before October 1, 2025 would be updated by the hospice payment update percentage rather than using the CPI–U (80 FR 47186). In addition, we finalized a provision to align the cap accounting year for both the inpatient cap and the hospice aggregate cap with the FY for FY 2017 and thereafter. Finally, the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47144) clarified that hospices would have to report all diagnoses on the hospice claim as a part of the ongoing data collection efforts for possible future hospice payment refinements.

10. FY 2017 Hospice Wage Index and Payment Rate Update Final Rule

In the FY 2017 Hospice Wage Index and Rate Update final rule (81 FR 52160), CMS finalized several new policies and requirements related to the HQRP. First, CMS codified the policy that if the National Quality Forum (NQF) made non-substantive changes to specifications for HQRP measures as part of the NQF's re-endorsement process, CMS would continue to utilize the measure in its new endorsed status, without going through new notice-and-comment rulemaking. CMS would continue to use rulemaking to adopt substantive updates made by the NQF to the endorsed measures adopted for the HQRP; determinations about what constitutes a substantive versus non-substantive change would be made on a measure-by-measure basis. Second, we finalized two new quality measures for the HQRP for the FY 2019 payment determination and subsequent years: Hospice Visits when Death is Imminent Measure Pair and Hospice and Palliative Care Composite Process Measure-Comprehensive Assessment at Admission (81 FR 52173). The data collection mechanism for both of these measures is the Hospice Item Set (HIS), and the measures were effective April 1, 2017. Regarding the CAHPS® Hospice Survey, CMS finalized a policy that hospices that receive their CMS Certification Number (CCN) after January 1, 2017 for the FY 2019 Annual Payment Update (APU) and January 1, 2018 for the FY 2020 APU will be exempted from the Hospice CAHPS® requirements due to newness (81 FR 52182). The exemption is determined by CMS and is for 1 year only.

11. FY 2020 Hospice Wage Index and Payment Rate Update Final Rule

In the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38484), we finalized rebased payment rates for CHC and GIP and set those rates equal to their average estimated FY 2019 costs per day. We also rebased IRC per diem rates equal to the estimated FY 2019 average costs per day, with a reduction of 5 percent to the FY 2019 average cost per day to account for coinsurance. We finalized the FY 2020 proposal to reduce the RHC payment rates by 2.72 percent to offset the increases to CHC, IRC, and GIP payment rates to implement this policy in a budget-neutral manner in accordance with section 1814(i)(6) of the Act (84 FR 38496).

In addition, we finalized a policy to use the current year's pre-floor, pre-reclassified hospital inpatient wage index as the wage adjustment to the labor portion of the hospice rates. Finally, in the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38505), we finalized modifications to the hospice election statement content requirements at § 418.24(b) by requiring hospices, upon request, to furnish an election statement addendum effective beginning in FY 2021. The addendum must list those items, services, and drugs the hospice has determined to be unrelated to the terminal illness and related conditions, increasing coverage transparency for beneficiaries under a hospice election.

12. Consolidated Appropriations Act, 2021

Division CC, section 404 of the CAA 2021 amended section 1814(i)(2)(B) of the Act and extended the provision that currently mandates the hospice cap be updated by the hospice payment update percentage (hospital market basket update reduced by the multifactor productivity adjustment) rather than the CPI–U for accounting years that end after September 30, 2016 and before October 1, 2030. Prior to enactment of this provision, the hospice cap update was set to revert to the original methodology of updating the annual cap amount by the CPI–U beginning on October 1, 2025. Division CC, section 407 of CAA 2021 revises section 1814(i)(5)(A)(i) to increase the payment reduction for hospices who fail to meet hospice quality measure reporting requirements from two percent to four percent beginning with FY 2024.

III. Provisions of the Proposed Rule

A. Hospice Utilization and Spending Patterns

CMS provides analysis as it relates to hospice utilization such as Medicare spending, utilization by level of care, lengths of stay, live discharge rates, and skilled visits during the last days of life using the most recent, complete claims data. Stakeholders report that such data can be used to educate hospices on Medicare policies to help ensure compliance. Moreover, in response to the Office of Inspector General (OIG) reports highlighting vulnerabilities in the Medicare hospice benefit including hospices engaging in inappropriate billing, not providing needed services and crucial information to beneficiaries in order for them to make informed decisions about their care, [3] we continue to monitor both hospice and non-hospice spending during a hospice election. We are still analyzing the effects of the COVID–19 PHE as it relates to the following routine monitoring analysis and whether those effects are likely to be temporary or permanent and if such effects vary significantly across hospice providers. Therefore, for the purposes of providing routine analysis on utilization and spending, in this proposed rule, we used the most complete data we have from FY 2019.

1. General Hospice Utilization Trends

Since the implementation of the hospice benefit in 1983, there has been substantial growth in hospice utilization. The number of Medicare beneficiaries receiving hospice services has grown from 584,438 in FY 2001 to over 1.6 million in FY 2019. Medicare hospice expenditures have risen from $3.5 billion in FY 2001 to approximately $20 billion in FY 2019.[4] CMS' Office of the Actuary (OACT) projects that aggregate hospice expenditures are expected to continue to increase, by approximately 7.6 percent annually. We note that the

[3] ''Hospice Inappropriately Billed Medicare Over $250 Million for General Inpatient Care'', OEI–02–10–00491, March, 2016. ''Vulnerabilities in the Medicare Hospice Program Affect Quality Care and Program Integrity: An OIG Portfolio'', OEI–02–16–00570, July, 2018.

[4] Source: Analysis of data for FY 2001 through FY 2019 accessed from the Chronic Conditions Data Warehouse (CCW) on January 15, 2021.

average spending per beneficiary has also increased between FY 2010 and FY 2019 from approximately $11,158 in FY 2010 to $12,687 in FY 2019.[5]

The percentage of Medicare decedents who died while receiving services under the Medicare hospice benefit has increased as shown in Table 1.

TABLE 1: Deaths in Hospice by Fiscal Year

FY	Total Deaths of Medicare Beneficiaries	Deaths of Medicare Beneficiaries Using Hospice	Percentage of Deaths in Hospice
2010	1,988,485	866,335	43.6%
2011	2,051,800	924,507	45.1%
2012	2,050,164	958,408	46.7%
2013	2,137,216	1,009,584	47.2%
2014	2,123,163	1,020,318	48.1%
2015	2,223,283	1,073,876	48.3%
2016	2,206,350	1,090,513	49.4%
2017	2,277,731	1,142,935	50.2%
2018	2,328,219	1,183,449	50.8%
2019	2,326,948	1,209,109	52.0%

Source: Analysis of data for FY 2010 through FY 2019 accessed from the CCW on January 15, 2021.
Note: Hospice deaths are counted as any hospice claim with a discharge status code of "40", "41", or "42".

Similar to the increase in the number of beneficiaries using the benefit, the total number of organizations offering hospice services also continues to grow, with for-profit providers entering the market at higher rates than not-for-profit providers. In its March 2020 Report to the Congress, MedPAC stated that for more than a decade, the increasing number of hospice providers is due almost entirely to the entry of for-profit providers. MedPAC also stated that long stays in hospice have been very profitable and this has attracted new provider entrants with revenue-generating strategies specifically targeting those patients expected to have longer lengths of stay.[6] Freestanding hospices continue to dominate the market as a whole. In FY 2019, 68 percent (3,254 out of 4,811) of hospices were for-profit and 21 percent (987 out of 4,811) were non-profit, whereas in FY 2014, 61 percent (2,513 out of 4,108) were for-profit and 25 percent (1,029 out of 4,108) of hospices were non-profit. In FY 2019, for-profit hospices provided approximately 58 percent of all hospice days while non-profit hospices provided 31 percent of all hospice days.[7] Hospices that listed their ownership status as ''Other'', ''Government'' or had an unknown ownership status accounted for the remaining percentage of hospice days.

There have been notable changes in the pattern of diagnoses among Medicare hospice enrollees since the implementation of the Medicare hospice benefit from primarily cancer diagnoses to neurological diagnoses, including Alzheimer's disease and other related dementias (80 FR 25839). Our ongoing analysis of diagnosis reporting finds that neurological and organ-based failure conditions remain the top-reported principal diagnoses. Beneficiaries with these terminal conditions tend to have longer hospice stays, which have historically been more profitable than shorter stays.[8] Table 2 shows the top 20 most frequently reported principal diagnoses on FY 2019 hospice claims.

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[5] Source: Analysis of data for FY 2010 through FY 2019 accessed from the CCW on Jan 15, 2021.

[6] Report to Congress, Medicare Payment Policy. Hospice Services, Chapter 12. MedPAC. March 2020. *http://www.medpac.gov/docs/default-source/reports/mar20_medpac_ch12_sec.pdf.*

[7] Source: FY 2014–FY 2019 hospice claims data from CCW on January 15, 2021. December 2020 Provider of Service (POS) File (*https://www.cms.gov/files/zip/posothercsvdec19.zip*).

NOTES: Using the Analytic file, we found there were 4,971 hospices that submitted at least one claim in FY 2019. Of those, we show the frequency of their ownership type as shown in the POS file. For-profit hospices include the ''proprietary'' categories. Non-profit includes the ''voluntary non-profit'' categories. Government includes the ''Government'' categories and the ''Combination Government & Nonprofit'' option. Other represents the ''other'' category. One hospice could not be linked to the POS file and is listed as unknown.

[8] Report to Congress, Medicare Payment Policy. Hospice Services, Chapter 12. MedPAC. March 2020. *http://www.medpac.gov/docs/default-source/reports/mar20_medpac_ch12_sec.pdf.*

TABLE 2: Top Twenty Principal Hospice Diagnoses, FY 2019

Rank	ICD-10/Reported Principal Diagnosis	Number of Beneficiaries	Percentage of all Reported Principal Diagnoses
1	G30.9-Alzheimer's disease, unspecified	148,890	9.2%
2	G31.1-Senile degeneration of brain, not elsewhere classified	92,931	5.8%
3	J44.9-Chronic obstructive pulmonary disease, unspecified	84,926	5.3%
4	I50.9-Heart failure, unspecified	60,383	3.7%
5	C34.90-Malignant neoplasm of unspecified part of unspecified bronchus or lung	51,927	3.2%
6	G30.1-Alzheimer's disease with late onset	47,817	3.0%
7	G20-Parkinson's disease	46,781	2.9%
8	I25.10-Atherosclerotic heart disease of native coronary artery without angina pectoris	43,186	2.7%
9	I67.2-Cerebral atherosclerosis	35,355	2.2%
10	I11.0-Hypertensive heart disease with heart failure	28,657	1.8%
11	J44.1-Chronic obstructive pulmonary disease with (acute) exacerbation	28,333	1.8%
12	I63.9-Cerebral infarction, unspecified	27,405	1.7%
13	C61-Malignant neoplasm of prostate	26,652	1.7%
14	I13.0-Hypertensive heart and chronic kidney disease with heart failure and stage 1 through stage 4 chronic kidney disease, or unspecified chronic kidney disease	25,818	1.6%
15	I67.9-Cerebrovascular disease, unspecified	24,467	1.5%
16	N18.6-End stage renal disease	22,727	1.4%
17	C25.9-Malignant neoplasm of pancreas, unspecified	21,700	1.3%
18	C18.9-Malignant neoplasm of colon, unspecified	21,111	1.3%
19	E43-Unspecified severe protein-calorie malnutrition	20,741	1.3%
20	I51.9-Heart disease, unspecified	17,428	1.1%

Source: Analysis of data for FY 2019 accessed from the CCW on January 15, 2021.
Notes: The frequencies shown represent beneficiaries that had a least one claim with the specific ICD–10 code reported as the principal diagnosis. Beneficiaries could be represented multiple times in the results if they had multiple claims during FY 2019 with different principal diagnoses. The percentage column represents the percentage of beneficiary/diagnosis pairs in FY 2019 with a specific ICD-10 code.

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Hospice Utilization by Level of Care

Our analysis shows that there have only been slight changes over time in how hospices have been utilizing the different levels of care. RHC consistently represents the highest percentage of total hospice days as well as the highest percentage of total hospice payments as shown in Tables 3 and 4).

TABLE 3: Percent of Hospice Days by Level of Care, FY 2010 and FY 2019

FY	RHC	CHC	IRC	GIP
2010	97.2%	0.4%	0.3%	2.1%
2019	98.3%	0.2%	0.3%	1.2%

TABLE 4: Percent of Payments to Hospices by Level of Care, FY 2010 and FY 2019

FY	RHC	CHC	IRC	GIP
2010	89.2%	2.0%	0.2%	8.5%
2019	93.8%	0.9%	0.3%	4.9%

In the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38496), we rebased the payment rates for the CHC, IRC, and GIP levels of care to better align hospice payment with the costs of providing care. We will continue to monitor the effects of these rebased rates to determine if there are any notable shifts in the provision of care or any other perverse utilization patterns that would warrant any program integrity or survey actions.

2. Trends in Hospice Length of Stay, Live Discharges and Skilled Visits in the Last Days of Life Analysis

Eligibility under the Medicare hospice benefit is predicated on the individual being certified as terminally ill. Medicare regulations at § 418.3 define ''terminally ill'' to mean that the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course. However, we recognize that a beneficiary may be under a hospice election longer than 6 months, as long as there remains a reasonable expectation that the individuals have a life expectancy of 6 months or less. It has always been our expectation that the certifying physicians will use their best clinical judgment, in accordance with the regulations at §§ 418.22 and 418.25, to determine if the individual has a life expectancy of 6 months or less with each certification and recertification.

Hospice Length of Stay

We examined hospice length of stay in three ways: (1) Average length of election, meaning the number of hospice days during a single hospice election at the time of live discharge or death; (2) the median lifetime length of stay, which represents the 50th percentile, and; (3) average lifetime length of stay, which includes the sum of all days of hospice care across all hospice elections. Extremely long lengths of stay influence both the average length of election and average lifetime length of stay. Table 5 shows the average length of election, the median and average lifetime lengths of stay from FYs 2016 through 2019.

TABLE 5: Hospice Length of Stay FYs 2016 - 2019

	FY 2016	FY 2017	FY 2018	FY 2019
Average Length of Election	74 Days	74 Days	75 Days	77 Days
Median Lifetime Length of Stay	19 Days	19 Days	19 Days	20 Days
Average Lifetime Length of Stay	95 Days	95 Days	96 Days	99 Days

Source: Hospice claims data accessed from CCW on January 15, 2021.

Length of stay estimates vary based on the reported principal diagnosis Table 6 lists the top six clinical categories of principal diagnoses reported on hospice claims in FY 2019 along with the corresponding number of hospice discharges. Patients with neurological and organ-based failure conditions (with the exception of kidney disease/kidney failure) tend to have much longer lengths of stay compared to patients with cancer diagnoses.

TABLE 6: Average Length of Stay in Days for Hospice Users in FY 2019

Category	Number of Hospice Users Discharged at the End of FY 2019	Average Length of Election	Median Lifetime Length of Stay	Average Lifetime Length of Stay
Alzheimer's, Dementia, and Parkinson's	210,944	126.9	52	169.0
CVA/Stroke	57,100	114.7	34	148.3
Cancers	290,868	45.7	17	53.5
Chronic Kidney Disease/Kidney Failure	28,130	35.6	8	44.3
Heart (CHF and Other Heart Disease)	210,087	85.4	24	107.6
Lung (COPD and Pneumonias)	112,852	82.2	20	108.0
Other	351,977	64.2	14	82.1
All Diagnoses	1,261,958	77.3	20	98.8

Source: Hospice claims data accessed from CCW on January 15, 2021

Notes: Only beneficiaries whose last day of hospice in FY 2019 was not associated with a discharge status code of ''30'' were counted (''30'' indicates they remained in hospice). We count the start of an election as when a patient begins hospice and is not already within a hospice election. We count elections as ending when we observe a discharge status code other than "30". Lifetime length of stay is determined using all hospice elections over the beneficiary's lifetime.

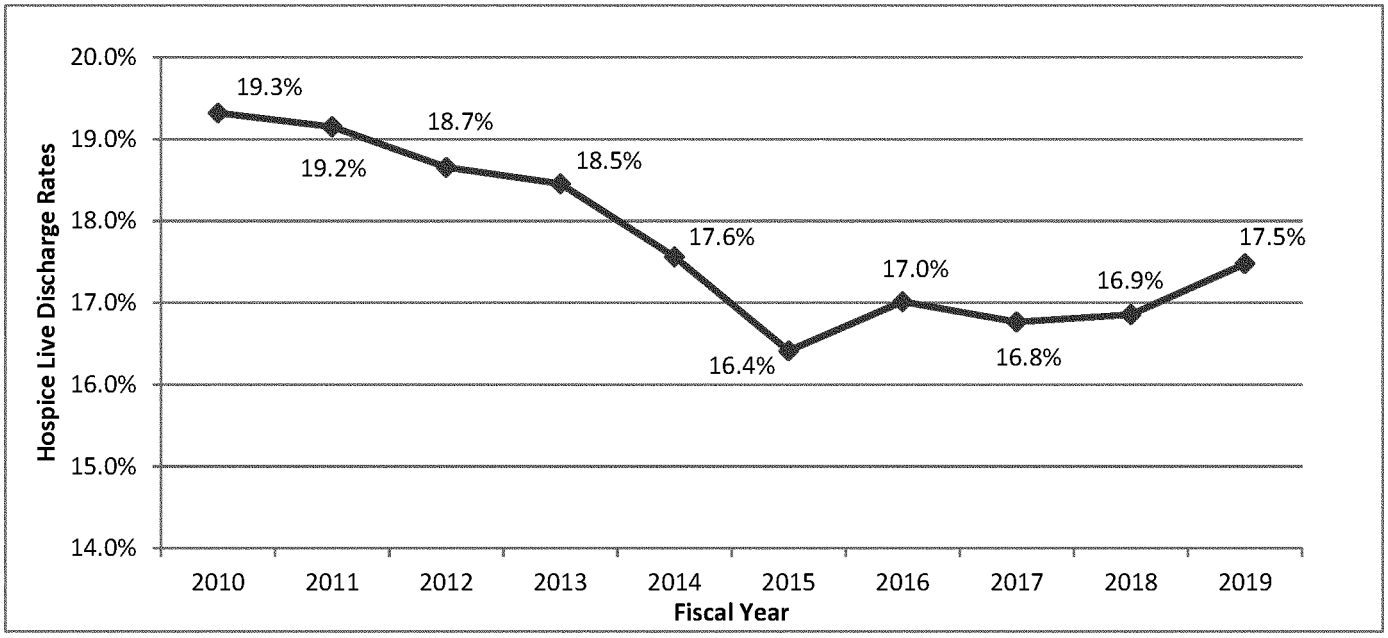
Hospice Live Discharges

Federal regulations limit the circumstances in which a Medicare hospice provider may discharge a patient from its care. In accordance with § 418.26, discharge from hospice care is permissible when the patient moves out of the provider's service area, is determined to be no longer terminally ill, or for cause. Hospices may not discharge the patient at their discretion, even if the care may be costly or inconvenient for the hospice. Additionally, an individual or representative may revoke the individual's election of hospice care at any time during an election period in accordance with the regulations at § 418.28. However, at any time thereafter, the beneficiary may re-elect hospice coverage at any other hospice election period that they are eligible to receive. Immediately upon hospice revocation, Medicare coverage resumes for those Medicare benefits previously waived with the hospice election. Only the beneficiary (or representative) can revoke the hospice election. A revocation must be in writing and must specify the effective date of the revocation. A hospice cannot revoke a beneficiary's hospice election, nor is it appropriate for hospices to encourage, request, or demand that the beneficiary or his or her representative revoke his or her hospice election.

From FY 2014 through FY 2019, the average live discharge rate has been approximately 17 percent per year. Of the live discharges in FY 2019, 37.5 percent were because of revocations, 37.2 percent were because the beneficiary was determined to no longer be terminally ill, 10.7 percent were because beneficiaries moved out of the service area without transferring hospices, and 12.9 percent were because beneficiaries transferred to another hospice (see Figure 1). The remaining 1.6 percent were discharged for cause.[9] Figure 1 shows the average annual rates of live discharge rates from FYs 2010 through 2019.

[9] For cause is defined in Chapter 9, Section 20.2.3 of the Hospice Benefit Policy Manual. *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c09.pdf.*

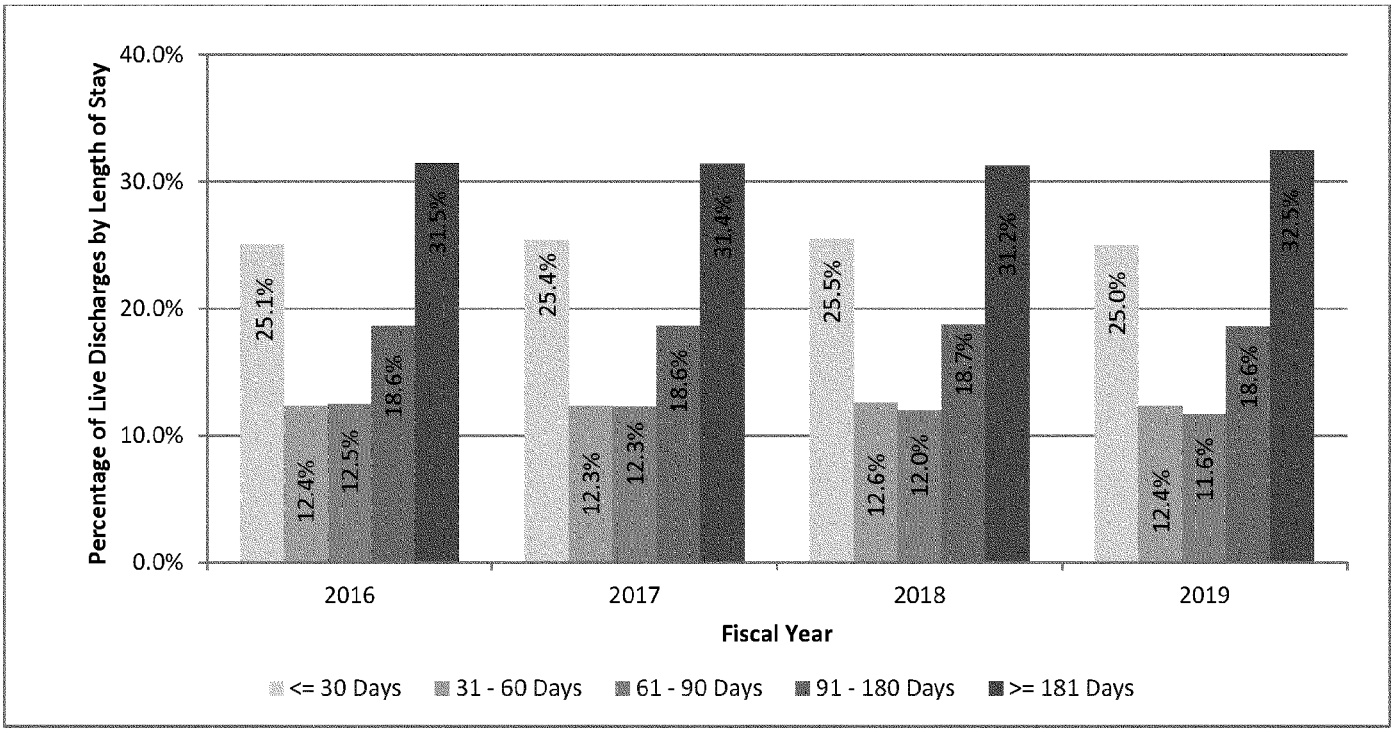
Figure 1: Annual Live Discharge Rates for FYs 2010 - FY 2019



Source: Analysis of data for FY 2010 through FY 2019 accessed from the CCW on January 15, 2021.
Notes: All hospice claims examined list a discharge status code (meaning claims were excluded if they listed status code 30, indicating a continuing patient). Discharges ending in death had a discharge status code of 40, 41, or 42. Any claims not already excluded or indicated a discharge resulting from death were considered live discharges.

Finally, we looked at the distribution of live discharges by length of stay intervals. Figure 2 shows the live discharge rates by length of stay intervals from FY 2016 through FY 2019. We found that the majority of live discharges occur in the first 30 days of hospice care and after 180 days of hospice care. The proportion of live discharges occurring between the lengths of stay intervals was relatively constant from FY 2016 to FY 2019 where approximately 25 percent of live discharges occurred within 30 days of the start of hospice care, and approximately 32 percent occurred after a length of stay over 180 days of hospice care.

Figure 2: Length of Stay Intervals Distribution for Live Discharges, FY 2016 to FY 2019



Source: Analysis of data for FY 2016 through FY 2019 accessed from the CCW on January 15, 2021.
Notes: All hospice claims examined list a discharge status code (meaning claims were excluded if they listed status code 30, indicating they were a continuing patient). Discharges ending in death had a discharge status code of 40, 41, or 42. Any claims not already excluded or indicated a discharge resulting from death were considered live discharges.

Service Intensity Add-On (SIA) Payment

A hospice's costs typically follow a U-shaped curve, with higher costs at the beginning and end of a stay, and lower costs in the middle of the stay. This cost curve reflects hospices' higher service intensity at the time of the patient's admission and the time surrounding the patient's death.[10] In the period immediately preceding death, patient needs typically surge and more intensive services are typically warranted, and where the provision of care would proportionately escalate to meet the increased clinical, emotional, and other needs of the hospice beneficiary and his or her family and caregiver(s).

In the FY 2016 Hospice Rate Update final rule (80 FR 47142), we established two different payment rates for RHC to reflect the cost of providing hospice care throughout the course of a hospice election. We finalized a higher base payment rate for the first 60 days of hospice care and a reduced base payment rate for days 61 and later. (80 FR 47172). To reflect higher costs associated with the last 7 days of life, in FY 2016, we implemented the service intensity add-on payment (SIA) for RHC when direct patient care is provided by a RN or social worker during the last 7 of the beneficiary's life. The SIA payment is equal to the CHC hourly rate multiplied by the hours of nursing or social work provided on the day of service (up to 4 hours), if certain criteria are met (80 FR 47177). This effort represented meaningful advances in encouraging visits to hospice beneficiaries during the time preceding death and where patient and family needs typically intensify.

To examine the effects of the SIA payment, we analyzed claims since the implementation of the SIA payment to determine if there was an increase in RN and social worker visits in the last seven days of life. In CY 2015 (the year preceding the SIA payment), the percentage of beneficiaries who did not receive a skilled nursing or social worker visit on the last day of life (when the last day of life was RHC) was nearly 23 percent. Our analysis shows a slight decline in the number of beneficiaries who did not receive an RN or social worker visit on the last day of life (when the last day of life was RHC) where the percentage trended downward to just over 19 percent in CYs 2017 to 2019. This trend is similar for the 4 days leading up to the end of life (when the last 4 days of life were RHC), meaning beneficiaries are receiving more skilled nursing and social worker visits during the last days of life since implementation of the SIA payment. Table 7 shows the percentage of decedents not receiving skilled visits at the end of life for CY 2015 through CY 2019.

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[10] Reforming Medicare's Hospice Benefit. MedPAC. March 2009. *http://www.medpac.gov/docs/default-source/reports/Mar09_Ch06.pdf?sfvrsn=0.*

TABLE 7: Percentage of Decedents Not Receiving Skilled Visits at the End of Life (on Routine Home Care Days), Calendar Years (CYs) 2015-2019

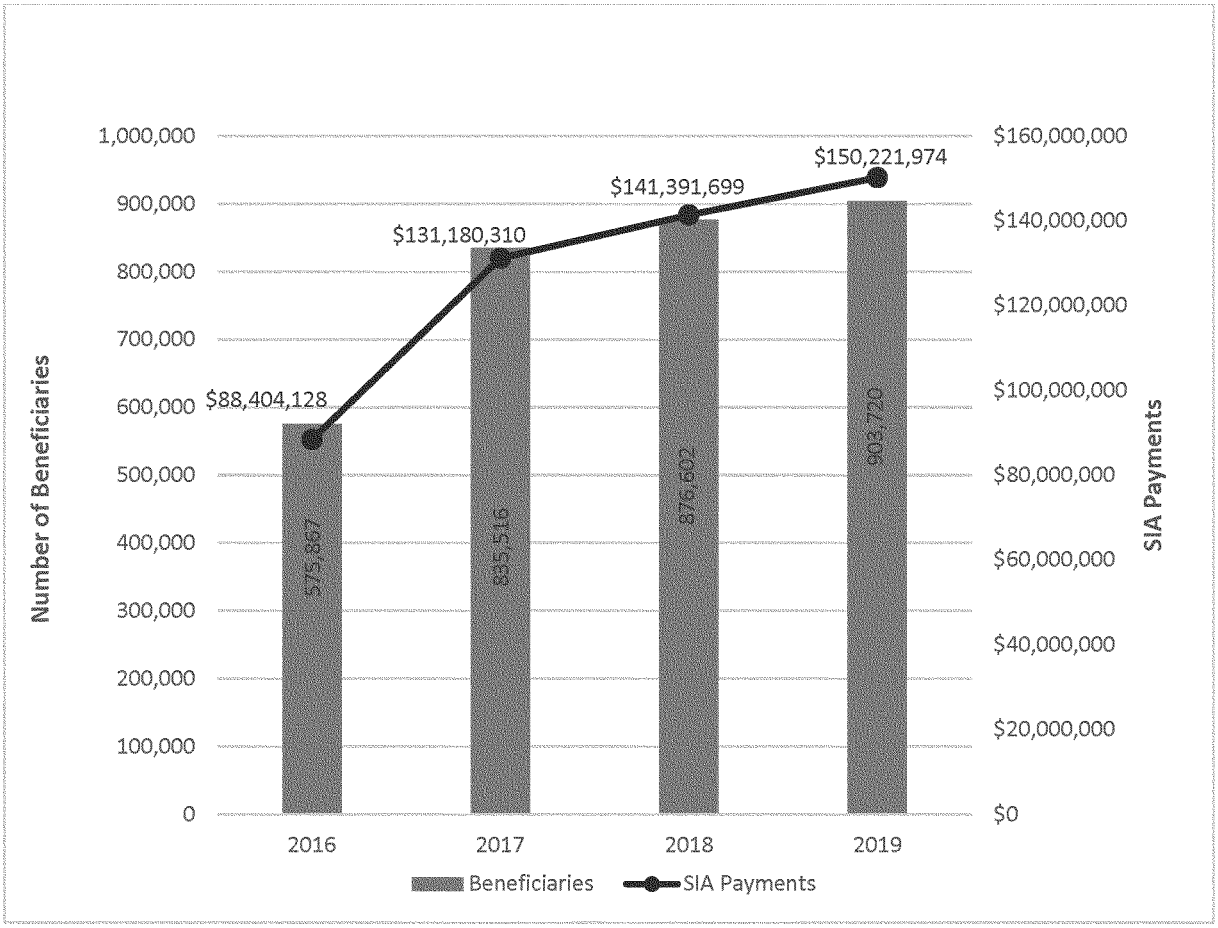
	CY 2015	CY 2016	CY 2017	CY 2018	CY 2019
No skilled visits on last day (and last day was RHC)	22.7%	20.4%	19.4%	19.5%	19.6%
No skilled visits on last two days (and last two days were RHC)	11.0%	9.3%	8.3%	7.8%	7.5%
No skilled visits on last three days (and last three days were RHC)	6.8%	5.7%	5.0%	4.6%	4.4%
No skilled visits on last four days (and last four days were RHC)	4.6%	3.8%	3.2%	2.9%	2.8%

Source: Analysis of Medicare hospice claims and administrative data (CY 2015-2019) accessed from the CCW on January 15, 2021.

Note: The FY 2016 payment reform was enacted on January 1, 2016, these analyses use CYs, not FYs, to better align with reform implementation.

SIA payments have increased from FY 2016 through FY 2019 from $88 million to $150 million respectively as shown in Figure 3.

Figure 3: Number of Beneficiaries with Visits that Qualified for SIA Payments, FY 2016 – FY 2019



Source: Analysis of data for FY 2016 through FY 2019 accessed from the CCW on January 15, 2021.
Note: SIA payments were determined by summing the revenue center payments for revenue codes 055x (Nursing) and 056x (Medical Social Services). FY 2016 only includes nine months of SIA payment because the policy started on January 1, 2016.

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To further evaluate the impact of the SIA, we examined the total amount of minutes provided by skilled nurses and social workers in the last 7 days of life and overall there were only modest changes from CY 2015 to CY 2019, as shown in Table 8.[11] MedPAC had examined skilled nurse and social worker minutes in the last 7 days of life from CY 2015 through 2018 in their March 2020 Report to Congress and similarly found little change overall.[12]

[11] *Note:* The SIA technically only applies to registered nurses and non-telephonic social worker visits. The distinction was not widely possible in the claims data prior to the SIA's implementation. For the analyses in this section we examine all skilled nurse and social worker visits, broadly.

[12] Report to Congress, Medicare Payment Policy. Hospice Services, Chapter 12. MedPAC. March 2020. *http://www.medpac.gov/docs/default-source/reports/mar20_medpac_ch12_sec.pdf.*

TABLE 8: Average Number of Minutes Provided in the Last Seven Days of Life on Routine Home Care days by Skilled Nurse and Medical Social Workers, CY 2015-2019

Year	Skilled Nurse Minutes	Social Worker Minutes	Total Minutes
2015	48.1	6.0	54.1
2016	49.5	6.5	56.0
2017	50.0	6.6	56.6
2018	50.3	6.6	56.9
2019	50.2	6.7	56.9

Source: Analysis of Medicare hospice claims and administrative data (CY 2015-2019) accessed from the CCW on January 15, 2021.

3. Non-Hospice Spending During a Hospice Election

The Medicare hospice per diem payment amounts were developed to cover all services needed for the palliation and management of the terminal illness and related conditions, as described in section 1861(dd)(1) of the Act. Hospice services provided under a written plan of care (POC) should reflect patient and family goals and interventions based on the problems identified in the initial, comprehensive, and updated comprehensive assessments. As referenced in our regulations at § 418.64 and section II.B of this rule, a hospice must routinely provide all core services directly by hospice employees and they must be provided in a manner consistent with acceptable standards of practice. Under the current payment system, hospices are paid for each day that a beneficiary is enrolled in hospice care, regardless of whether services are rendered on any given day.

Additionally, when a beneficiary elects the Medicare hospice benefit, he or she waives the right to Medicare payment for services related to the treatment of the terminal illness and related conditions, except for services provided by the designated hospice and the attending physician. The comprehensive nature of the services covered under the Medicare hospice benefit is structured such that hospice beneficiaries should not have to routinely seek items, services, and/or medications beyond those provided by hospice. We believe that it would be unusual and exceptional to see services provided outside of hospice for those individuals who are approaching the end of life and we have reiterated since 1983 that ''virtually all'' care needed by the terminally ill individual would be provided by the hospice.

In examining overall non-hospice spending during a hospice election, Medicare paid over $1 billion in non-hospice spending during a hospice election in FY 2019 for items and services under Parts A, B, and D. Medicare payments for non-hospice Part A and Part B items and services received by hospice beneficiaries during a hospice election increased from $583 million in FY 2016 to $692 million in FY 2019 (see Figure 4). This represents an increase in non-hospice Medicare spending for Parts A and B of 18.7 percent. Whereas there is minimal beneficiary cost sharing under the Medicare hospice benefit,[13] non-hospice services received outside of the Medicare hospice benefit are subject to beneficiary cost sharing. In FY 2019, the total beneficiary cost sharing amount was $170 million for Parts A and B.[14]

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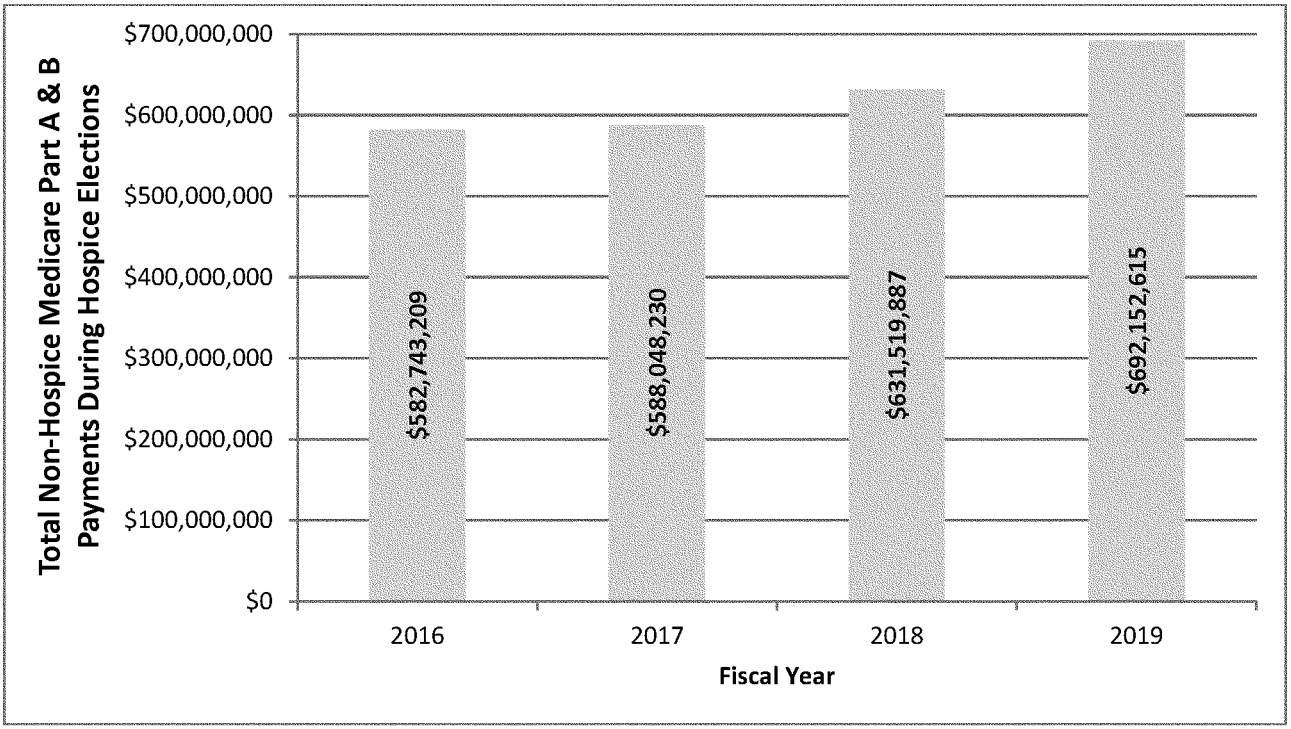
[13] The amount of coinsurance for each prescription approximates 5 percent of the cost of the drug or biological to the hospice determined in accordance with the drug copayment schedule established by the hospice, except that the amount of coinsurance for each prescription may not exceed $5. The amount of coinsurance for each respite care day is equal to 5 percent of the payment made by CMS for a respite care.

[14] Part A and B cost sharing is calculated by summing together the deductible and coinsurance amounts for each claim.

Figure 4: Medicare Payments for Non-Hospice Medicare Part A and Part B Items and Services During Hospice Elections, FY 2016 – FY 2019



Source: Analysis of 100% Medicare Part A and B claims analytic files, FY 2016 – 2019, from the CCW, accessed January 15, 2021.

Notes: Payments are based on estimated total non-hospice Medicare utilization ($) per hospice service day, excluding utilization on hospice admission or live discharge days. Only Medicare paid amounts are included. The Medicare paid amounts were equally apportioned across the length of each claim and only the days that overlapped a hospice election (not including hospice admission or live discharge days) were counted.

We also examined non-hospice spending during a hospice election by claim type for Parts A and B, as shown in Table 9.

TABLE 9: Total Medicare Spending Outside the Hospice Benefit during Days of Hospice Service (Excluding Admission/Live Discharge Days) By Claim Type [All Beneficiaries], FY 2016 - FY 2019

Claim Type	FY 2016	FY 2017	FY 2018	FY 2019
Durable Medical Equipment	$38,702,631	$40,740,569	$46,385,066	$54,465,708
Home Health Agency	$19,860,890	$17,491,197	$16,181,405	$16,274,141
Inpatient	$136,926,412	$132,750,947	$139,348,335	$141,717,834
Outpatient	$104,866,171	$109,554,523	$120,840,000	$135,302,250
Physician Billing	$261,085,794	$272,239,518	$296,053,914	$335,142,715
Skilled Nursing Facility	$21,301,311	$15,271,476	$12,711,167	$9,249,967

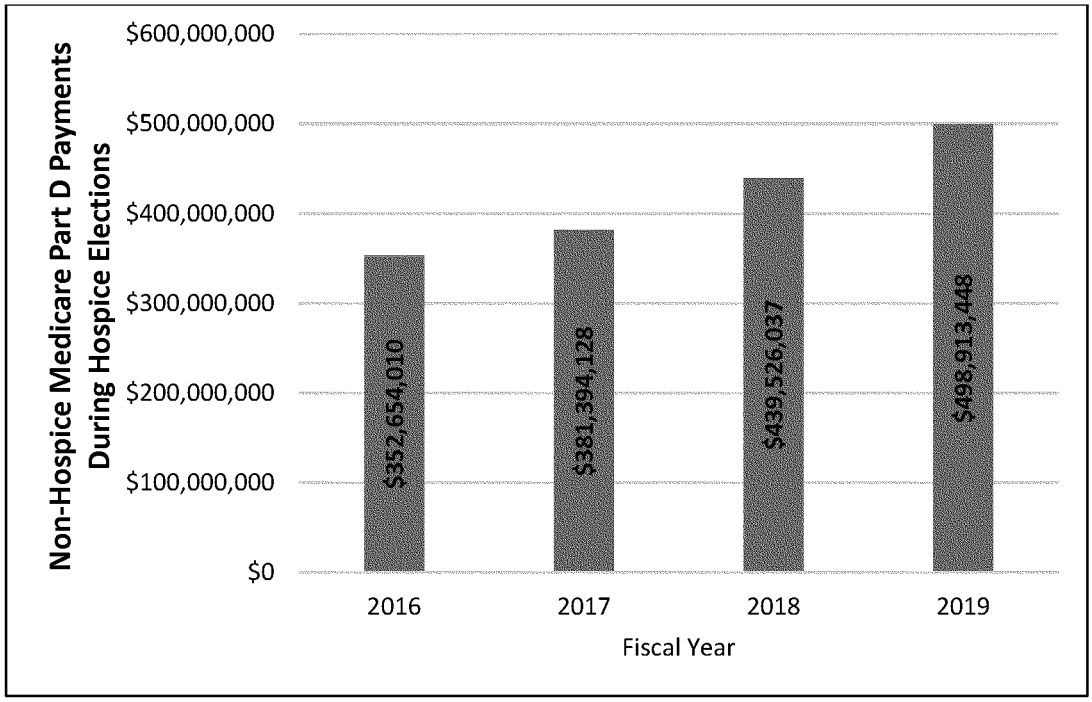
Source: Analysis of 100% Medicare Part A and B claims analytic files, FY 2016 – 2019 from the CCW, accessed January 15, 2021.

Notes: Payments are based on estimated total non-hospice Medicare utilization ($) per hospice service day, excluding utilization on hospice admission or live discharge days. Only Medicare paid amounts are included. The Medicare paid amounts were equally apportioned across the length of each claim and only the days that overlapped a hospice election (not including hospice admission or live discharge days) were counted.

Hospices are responsible for covering drugs and biologicals related to the palliation and management of the terminal illness and related conditions while the patient is under hospice care. For a prescription drug to be covered under Part D for an individual enrolled in hospice, the drug must be for treatment completely unrelated to the terminal illness or related conditions. After a hospice election, many maintenance drugs or drugs used to treat or cure a condition are typically discontinued as the focus of care shifts to palliation and comfort measures. However, those same drugs may be appropriate to continue as they may offer symptom relief for the palliation and management of the terminal prognosis.[15] Similar to the increase in non-hospice spending during a hospice election for Medicare Parts A and B items and services, non-hospice spending for Part D drugs increased in from $353 million in FY 2016 to $499 million in FY 2019 (Figure 5).

[15] Update on Part D Payment Responsibility for Drugs for Beneficiaries Enrolled in Medicare Hospice. November 2016. *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/2016-11-15-Part-D-Hospice-Guidance.pdf.*

Figure 5: Total Payments for Non-Hospice Medicare Part D Drugs During Hospice Elections, FY 2016- FY 2019



Source: Analysis of 100% Part D prescription drug events (PDEs), FY 2016 - 2019 from the CCW Virtual Research Data Center (January 15, 2021).

Notes: The Medicare paid amounts were assigned to hospice days based on the service date on the PDE. Only service dates that fell within a hospice election and were not hospice admission or live discharge days were counted. The Medicare paid amount includes the low income cost-sharing subsidy and covered drug plan paid amount on Part D PDEs.

Analysis of Part D prescription drug events (PDEs) data suggests that the current use of prior authorization (PA) by Part D sponsors has reduced Part D program payments for drugs in four targeted categories (analgesics, anti-nauseants, anti-anxiety, and laxatives), which are typically used to treat common symptoms experienced during the end of life. However, under Medicare Part D there has been an increase in hospice beneficiaries filling prescriptions for a separate category of drugs we refer to as maintenance drugs (*https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/2016-11-15-Part-D-Hospice-Guidance.pdf*). Under CMS's current policy, Part D sponsors are not expected to place hospice PA requirements on categories of drugs (other than the four targeted categories listed above) or take special measures beyond their normal compliance and utilization review activities. Under this policy, sponsors are not expected to place PA requirements on maintenance drugs, for beneficiaries under a hospice election, though these drugs may still be subject to standard Part D formulary management practices. This policy was put in place in recognition of the operational challenges associated with requiring PA on all drugs for beneficiaries who have elected hospice and because of the potential barriers to access that could be created by requiring PA on all drugs.[16] Examples of maintenance drugs are those used to treat high blood pressure, heart disease, asthma and diabetes. These categories include beta blockers, calcium channel blockers, corticosteroids, and insulin.

Table 10 details the various components of Part D spending for patients receiving hospice care for FY 2019. The portion of the FY 2019 Part D spending that was paid by Medicare is the sum of the Low Income Cost-Sharing Subsidy and the Covered Drug Plan Paid Amount, approximately $499 million. The beneficiary cost sharing amount was approximately $59 million.[17]

[16] Part D Payment for Drugs for Beneficiaries Enrolled in Medicare Hospice. July 18, 2014. *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/2014-PartD-Hospice-Guidance-Revised-Memo.pdf.*

[17] Part D cost sharing is calculated by summing together the ''the patient pay amount'' and the ''other true out of pocket'' amount that are recorded on the Part D PDE.

TABLE 10: Drug Cost Sources for Hospice Beneficiaries' FY 2019 Drugs Received Through Part D

Component	FY 2019 Expenditures
Patient Pay Amount	$58,509,601
Low Income Cost-Sharing Subsidy	$137,228,459
Other True Out-of Pocket Amount	$1,384,551
Patient Liability Reduction Due to Other Payer Amount	$17,073,388
Covered Drug Plan Paid Amount	$361,684,989
Non-Covered Plan Paid Amount	$12,407,033
Six Payment Amount Totals	**$588,288,021**
Unknown/Unreconciled	$27,560,104
Gross Total Drug Costs, Reported	**$615,848,125**

Source: Analysis of 100% Part D prescription drug events (PDEs), FY 2019, from the CCW, accessed January 15, 2021.
Notes: Payments and costs that occur on hospice admission or live discharge days are excluded from the analysis.

Comment Solicitation on Analysis of Hospice Utilization and Spending Patterns

We are soliciting comments on all aspects of the analysis presented in this proposed rule regarding hospice utilization and spending patterns. Our ongoing monitoring and analysis have shown that the hospice benefit has evolved; originally providing services primarily to patients with cancer, to now primarily patients with neurological conditions and organ-based failure. We are particularly interested in how this change in patient characteristics may have influenced any changes in the provision of hospice services. As mentioned in the above analysis, after the implementation of the SIA in FY 2016, the number of beneficiaries who did not receive an RN or social worker visit on the last day of has decreased. We are soliciting comments regarding skilled visits in the last week of life, particularly, what factors determine how and when visits are made as an individual approaches the end of life.

Given the comprehensive and holistic nature of the services covered under the Medicare hospice benefit, we continue to expect that hospices are providing virtually all of the care needed by terminally ill individuals. However, the analysis of non-hospice spending during a hospice election indicates a continuing trend where there is a potential ''unbundling'' of items, services, and drugs from the Medicare hospice benefit. That is, there may be items, services, and drugs that should be covered under the Medicare hospice benefit but are being paid under other Medicare benefits. We are soliciting comments as to how hospices make determinations as to what items, services and drugs are related versus unrelated to the terminal illness and related conditions. That is, how do hospices define what is unrelated to the terminal illness and related conditions when establishing a hospice plan of care. Likewise, we are soliciting comments on what other factors may influence whether or how certain services are furnished to hospice beneficiaries. Finally, we are interested in stakeholder feedback as to whether the hospice election statement addendum has changed the way hospices make care decisions and how the addendum is used to prompt discussions with beneficiaries and non-hospice providers to ensure that the care needs of beneficiaries who have elected the hospice benefit are met.

B. FY 2022 Proposed Labor Shares

1. Background

The labor share for CHC and RHC of 68.71 percent was established with the FY 1984 Hospice benefit implementation based on the wage/nonwage proportions specified in Medicare's limit on home health agency costs (48 FR 38155 through 38156). The labor shares for IRC and GIP are currently 54.13 percent and 64.01 percent, respectively. These proportions were based on skilled nursing facility wage and nonwage cost limits and skilled nursing facility costs per day (48 FR 38155 through 38156; 56 FR 26917).

For the FY 2022 proposed rule, we are proposing to rebase and revise the labor shares for CHC, RHC, IRC and GIP using MCR data for freestanding hospices (CMS Form 1984–14, OMB NO. 0938–0758 [18]) for 2018. We are proposing to continue to establish separate labor shares for CHC, RHC, IRC, and GIP and base them on the calculated compensation cost weights for each level of care from the 2018 MCR data. We describe our proposed methodology for deriving the compensation cost weights for each level of care using the MCR data below. We note that we did explore the possibility of using facility-based hospice MCR data to calculate the compensation cost weights; however, very few providers passed the Level I edits (as described in more detail below) and so these reports were not usable.

1. Proposed Methodology for Calculating Compensation Costs

We are proposing to derive a compensation cost weight for each level of care that consists of five major components: (1) Direct patient care salaries and contract labor costs, (2) direct patient care benefits costs, (3) other patient care salaries, (4) overhead salaries, and (5) overhead benefits costs. For each level of care, we are proposing to use the same methodology to derive the components; however, for the (1)

[18] Hospice Facility Cost Report. *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing-Items/CMS-1984-14.*

direct patient care salaries and (3) other patient care salaries, we are proposing to use the MCR worksheet that is specific to that level of care (that is, Worksheet A–1 for CHC, Worksheet A–2 for RHC, Worksheet A–3 for IRC, and Worksheet A–4 for GIP).

(1) Direct Patient Care Salaries and Contract Labor Costs

Direct patient care salaries and contract labor costs are costs associated with medical services provided by medical personnel including but not limited to physician services, nurse practitioners, registered nurses, and hospice aides. We are proposing to define direct patient care salaries and contract labor costs to be equal to costs reported on Worksheet A–1 (for CHC) or Worksheet A–2 (for RHC) or Worksheet A–3 (for IRC) or Worksheet A–4 (for GIP), column 7, for lines 26 through 37.

(2) Direct Patient Care Benefits Costs

We are proposing that direct patient care benefits costs for CHC would be equal to Worksheet B, column 3, line 50, for RHC are equal to Worksheet B, column 3, line 51, for IRC are equal to Worksheet B, column 3, line 52, and for GIP are equal to Worksheet B, column 3, line 53.

(3) Other Patient Care Salaries

Other patient care salaries are those salaries attributable to patient services including but not limited to patient transportation, labs, and imaging services. These salaries, reflecting all levels of care, are reported on Worksheet A, column 1, lines 38 through 46 and then are further disaggregated for CHC, RHC, IRC, and GIP on Worksheets A–1, A–2, A–3, and A–4, respectively, on column 1 (salaries), lines 38 through 46. Our analysis, however, found that many providers were not reporting salaries on the detailed level of care worksheets (A–1, A–2, A–3, A–4, column 1), but rather reporting total costs (reflecting salary and non-salary costs) for these services for each level of care on Worksheets A–1, A–2, A–3, A–4, column 7. Therefore, we are proposing to estimate other patient care salaries attributable to CHC, RHC, IRC, and GIP by first calculating the ratio of total facility (reflecting all levels of care) other patient care salaries (Worksheet A, column 1, lines 38 through 46) to total facility other patient care total costs (Worksheet A, column 7, lines 38 through 46). For CHC, we are proposing to then multiply this ratio by other patient care total costs for CHC (Worksheet A–1 column 7, lines 38 through 46). For RHC, we are proposing to multiply this ratio by total other patient care costs for RHC (Worksheet A–2, column 7, lines 38 through 46). For IRC, we are proposing to multiply this ratio by total other patient care costs for IRC (Worksheet A–3, column 7, lines 38 through 46). For GIP, we are proposing to multiply this ratio by total other patient care costs for GIP (Worksheet A–4, column 7, lines 38 through 46). This proposed methodology assumes that the proportion of salary costs to total costs for other patient care services is consistent for each of the four levels of care.

(4) Overhead Salaries

The MCR captures total overhead costs (including but not limited to administrative and general, plant operations and maintenance, and housekeeping) attributable to each of the four levels of care. To estimate overhead salaries for each level of care, we first propose to calculate noncapital non-benefit overhead costs for each level of care to be equal to Worksheet B, column 18, less the sum of Worksheet B, columns 0 through 3, for line 50 (CHC), or line 51 (RHC) or line 52 (IRC) or line 53 (GIP). We then are proposing to multiply these non-capital non-benefit overhead costs for each level of care times the ratio of total facility overhead salaries (Worksheet A, column 1, lines 4 through 16) to total facility non-capital non-benefit overhead costs (which is equal to Worksheet B, column 18 (total costs), line 101 less the sum of Worksheet B, columns 0 (direct patient care costs), column 1 (fixed capital), column 2 (moveable capital) and column 3 (employee benefits), line 101).

(5) Overhead Benefits Costs

To estimate overhead benefits costs for each level of care, we are proposing a similar methodology to overhead salaries. For each level of care, we are proposing to calculate noncapital overhead costs for each level of care to be equal to Worksheet B, column 18, less the sum of Worksheet B, columns 0 through 2, for line 50 (CHC), or line 51 (RHC) or line 52 (IRC) or line 53 (GIP). We then are proposing to multiply these non-capital overhead costs for each level of care times the ratio of total facility overhead benefits (Worksheet B, column 3, lines 4 through 16) to total facility noncapital overhead costs (Worksheet B, column 18, line 101 less the sum of Worksheet B, columns 0 through 2, line 101). This proposed methodology assumes the ratio of total overhead benefit costs to total noncapital overhead costs is consistent among all four levels of care.

(6) Total Compensation Costs and Total Costs

To calculate the compensation costs for each provider, we are proposing to then sum each of the costs estimated in steps (1) through (5) to derive total compensation costs for CHC, RHC, IRC, and GIP. We are proposing that total costs for CHC are equal to Worksheet B, column 18, line 50, for RHC are equal to Worksheet B, column 18, line 51, for IRC would be equal to Worksheet B, column 18, line 52, and for GIP are equal to Worksheet B, column 18, line 53.

2. Proposed Methodology for Deriving Compensation Cost Weights

To derive the compensation cost weights for each level of care, we first are proposing to begin with a sample of providers who met new Level I edit conditions that required freestanding hospices to fill out certain parts of their cost reports effective for freestanding hospice cost reports with a reporting period that ended on or after December 31, 2017.[19] Specifically, we required the following costs to be greater than zero: Fixed capital costs (Worksheet B, column 0, line 1), movable capital costs (Worksheet B, column 0, line 2), employee benefits (Worksheet B, column 0, line 3), administrative and general (Worksheet B, column 0, line 4), volunteer service coordination (Worksheet B, column 0, line 13), pharmacy and drugs charged to patients (sum of Worksheet B, column 0, line 14 and Worksheet A, column 7, line 42.50), registered nurse costs (Worksheet A, column 7, line 28), medical social service costs (Worksheet A, column 7, line 33), hospice aide and homemaker services costs (Worksheet A, column 7, line 37), and durable medical equipment (Worksheet A, column 7, line 38). Applying these Level I edits to the 2018 freestanding hospice MCRs resulted in 3,345 providers that passed the edits (four were excluded).

Then, for each level of care separately, we are proposing to further trim the sample of MCRs. We outline our proposed trimming methodology using CHC as an example. Specifically, for CHC, we propose that total CHC costs (Worksheet B, column 18, line 50) and CHC compensation costs to be greater than zero. We also propose that CHC direct patient care salaries and contract labor costs per day would be greater

[19] Medicare Department of Health and Human Services (DHHS) Provider Reimbursement Manual—Part 2, Provider Cost Reporting Forms and Instructions, Chapter 43, Form CMS–1984–14. April 13, 2018. *https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/2018Downloads/R3P243.pdf.*

than 1. We also propose to exclude those providers whose CHC compensation costs were greater than total CHC costs.

For the IRC and GIP compensation cost weights, we are proposing to only use those MCRs from providers that provided inpatient services in their facility. Therefore, we are proposing to exclude providers that reported costs greater than zero on Worksheet A–3, column 7, line 25 (Inpatient Care—Contracted) for IRC and Worksheet A–4, column 7, line 25 (Inpatient Care—Contracted) for GIP. The facilities that remained after this trim reported detailed direct patient care costs and other patient care costs for which we could then derive direct patient care salaries and other patient care salaries per the methodology described earlier. This additional trim resulted in a sample that consists of approximately 20 percent of IRP providers and 28 percent of GIP providers that passed both the Level I edits and the trims that required total costs and compensation costs to be greater than zero, and direct patient care salaries and contract labor costs per day to be greater than 1, as well as total costs to be greater than compensation costs.

Finally, to derive the proposed compensation cost weights for each level of care for each provider, we are proposing to divide compensation costs for each level of care by total costs for each level of care. We are proposing to then trim the data for each level of care separately to remove outliers. Following our example for CHC, we are proposing to simultaneously remove those providers whose total CHC costs per day fall in the top and bottom one percent of total CHC costs per day for all CHC providers as well remove those providers whose compensation cost weight falls in the top and bottom five percent of compensation cost weights for all CHC providers. We then sum the CHC compensation costs and total CHC costs of the remaining providers, yielding a proposed compensation cost weight for CHC.

Since we have to limit our sample for IRC and GIP compensation cost weights to those hospices providing inpatient services in their facility, we conducted sensitivity analysis to test for the representative of this sample by reweighting compensation cost weights using data from the universe of freestanding providers that reported either IRC or GIP total costs. For example, we calculated reweighted compensation cost weights by ownership-type (proprietary, government and nonprofit), by size (based on RHC days) and by region. Our reweighted compensation cost weights for IRC and GIP were similar (less than one percentage point in absolute terms) to our proposed compensation cost weights for IRC and GIP (as shown in Table 11) and, therefore, we believe our sample is representative of freestanding hospices providing inpatient hospice care.

Table 11 provides the proposed labor share for each level of care based on the compensation cost weights we derived using our proposed methodology described previously. We are proposing the labor shares be equal to three decimal places consistent with the labor shares used in other Prospective Payment Systems (PPS) (such as the inpatient prospective payment system (IPPS) and the Home Health Agency PPS). We invite comments on our proposed methodology to derive the labor shares for each level of care.

TABLE 11: Proposed and Current Labor shares by Level of Care

	Proposed Labor shares	Current Labor shares
Continuous Home Care	74.6%	68.71%
Routine Home Care	64.7%	68.71%
Inpatient Respite Care	60.1%	54.13%
General Inpatient Care	62.8%	64.01%

C. Proposed Routine FY 2022 Hospice Wage Index and Rate Update

1. Proposed FY 2022 Hospice Wage Index

The hospice wage index is used to adjust payment rates for hospices under the Medicare program to reflect local differences in area wage levels, based on the location where services are furnished. The hospice wage index utilizes the wage adjustment factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustments. Our regulations at § 418.306(c) require each labor market to be established using the most current hospital wage data available, including any changes made by the Office of Management and Budget (OMB) to the Metropolitan Statistical Areas (MSAs) definitions.

In general, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. However, OMB occasionally issues minor updates and revisions to statistical areas in the years between the decennial censuses. On March 6, 2020, OMB issued Bulletin No. 20–01, which provided updates to and superseded OMB Bulletin No. 18–04 that was issued on September 14, 2018. The attachments to OMB Bulletin No. 20–01 provided detailed information on the update to statistical areas since September 14, 2018, and were based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2017 and July 1, 2018. (For a copy of this bulletin, we refer readers to the following website: *https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf*). In OMB Bulletin No. 20–01, OMB announced one new Micropolitan Statistical Area, one new component of an existing Combined Statistical Are and changes to New England City and Town Area (NECTA) delineations. In the FY 2021 Hospice Wage Index final rule (85 FR 47070) we stated that if appropriate, we would propose any updates from OMB Bulletin No. 20–01 in future rulemaking. After reviewing OMB Bulletin No. 20–01, we have determined that the changes in Bulletin 20–01 encompassed delineation changes

that would not affect the Medicare wage index for FY 2022. Specifically, the updates consisted of changes to NECTA delineations and the redesignation of a single rural county into a newly created Micropolitan Statistical Area. The Medicare wage index does not utilize NECTA definitions, and, as most recently discussed in the FY 2021 Hospice Wage Index final rule (85 FR 47070), we include hospitals located in Micropolitan Statistical areas in each state's rural wage index. Therefore, while we are proposing to adopt the updates set forth in OMB Bulletin No. 20–01 consistent with our longstanding policy of adopting OMB delineation updates, we note that specific wage index updates would not be necessary for FY 2022 as a result of adopting these OMB updates. In other words, these OMB updates would not affect any geographic areas for purposes of the wage index calculation for FY 2022.

In the FY 2020 Hospice Wage Index final rule (84 FR 38484), we finalized the proposal to use the current FY's hospital wage index data to calculate the hospice wage index values. In the FY 2021 Hospice Wage Index final rule (85 FR 47070), we finalized the proposal to adopt the revised OMB delineations with a 5 percent cap on wage index decreases, where the estimated reduction in a geographic area's wage index would be capped at 5 percent in FY 2021 and no cap would be applied to wage index decreases for the second year (FY 2022). For FY 2022, the proposed hospice wage index would be based on the FY 2022 hospital pre-floor, pre-reclassified wage index for hospital cost reporting periods beginning on or after October 1, 2017 and before October 1, 2018 (FY 2018 cost report data). The proposed FY 2022 hospice wage index would not include a cap on wage index decreases and would not take into account any geographic reclassification of hospitals, including those in accordance with section 1886(d)(8)(B) or 1886(d)(10) of the Act. The appropriate wage index value is applied to the labor portion of the hospice payment rate based on the geographic area in which the beneficiary resides when receiving RHC or CHC. The appropriate wage index value is applied to the labor portion of the payment rate based on the geographic location of the facility for beneficiaries receiving GIP or IRC.

In the FY 2006 Hospice Wage Index final rule (70 FR 45135), we adopted the policy that, for urban labor markets without a hospital from which hospital wage index data could be derived, all of the Core-Based Statistical Areas (CBSAs) within the state would be used to calculate a statewide urban average pre-floor, pre-reclassified hospital wage index value to use as a reasonable proxy for these areas. For FY 2022, the only CBSA without a hospital from which hospital wage data can be derived is 25980, Hinesville-Fort Stewart, Georgia. The FY 2022 adjusted wage index value for Hinesville-Fort Stewart, Georgia is 0.8649.

There exist some geographic areas where there were no hospitals, and thus, no hospital wage data on which to base the calculation of the hospice wage index. In the FY 2008 Hospice Wage Index final rule (72 FR 50217 through 50218), we implemented a methodology to update the hospice wage index for rural areas without hospital wage data. In cases where there was a rural area without rural hospital wage data, we use the average pre-floor, pre-reclassified hospital wage index data from all contiguous CBSAs, to represent a reasonable proxy for the rural area. The term ''contiguous'' means sharing a border (72 FR 50217). Currently, the only rural area without a hospital from which hospital wage data could be derived is Puerto Rico. However, for rural Puerto Rico, we would not apply this methodology due to the distinct economic circumstances that exist there (for example, due to the close proximity to one another of almost all of Puerto Rico's various urban and non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas); instead, we would continue to use the most recent wage index previously available for that area. For FY 2022, we propose to continue to use the most recent pre-floor, pre-reclassified hospital wage index value available for Puerto Rico, which is 0.4047, subsequently adjusted by the hospice floor.

As described in the August 8, 1997 Hospice Wage Index final rule (62 FR 42860), the pre-floor and pre-reclassified hospital wage index is used as the raw wage index for the hospice benefit. These raw wage index values are subject to application of the hospice floor to compute the hospice wage index used to determine payments to hospices. As previously discussed, the adjusted pre-floor, pre-reclassified hospital wage index values below 0.8 will be further adjusted by a 15 percent increase subject to a maximum wage index value of 0.8. For example, if County A has a pre-floor, pre-reclassified hospital wage index value of 0.3994, we would multiply 0.3994 by 1.15, which equals 0.4593. Since 0.4593 is not greater than 0.8, then County A's hospice wage index would be 0.4593. In another example, if County B has a pre-floor, pre-reclassified hospital wage index value of 0.7440, we would multiply 0.7440 by 1.15, which equals 0.8556. Because 0.8556 is greater than 0.8, County B's hospice wage index would be 0.8. The proposed hospice wage index applicable for FY 2022 (October 1, 2021 through September 30, 2022) is available on our website at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Hospice-Wage-Index.html.*

2. Proposed FY 2022 Hospice Payment Update Percentage

Section 4441(a) of the BBA (Pub. L. 105–33) amended section 1814(i)(1)(C)(ii)(VI) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were to be updated by a factor equal to the inpatient hospital market basket percentage increase set out under section 1886(b)(3)(B)(iii) of the Act, minus 1 percentage point. Payment rates for FYs since 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs must be the inpatient market basket percentage increase for that FY. CMS currently uses 2014-based IPPS operating and capital market baskets to update the market basket percentage. In the FY 2022 IPPS proposed rule [20] CMS is proposing to rebase and revise the IPPS market baskets to reflect a 2018 base year. We refer stakeholders to the FY 2022 IPPS proposed rule for further information.

Section 3401(g) of the Affordable Care Act mandated that, starting with FY 2013 (and in subsequent FYs), the hospice payment update percentage would be annually reduced by changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP).

The proposed hospice payment update percentage for FY 2022 is based on the current estimate of the proposed inpatient hospital market basket update of 2.5 percent (based on IHS Global Inc.'s fourth-quarter 2020 forecast with historical data through the third quarter 2020). Due to the requirements at sections 1886(b)(3)(B)(xi)(II) and 1814(i)(1)(C)(v) of the Act, the proposed inpatient hospital market basket update

[20] IPPS Regulations and Notices. *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/IPPS-Regulations-and-Notices.*

for FY 2022 of 2.5 percent must be reduced by a MFP adjustment as mandated by Affordable Care Act (currently estimated to be 0.2 percentage points for FY 2022). In effect, the proposed hospice payment update percentage for FY 2022 would be 2.3 percent. If more recent data becomes available after the publication of this proposed rule and before the publication of the final rule (for example, more recent estimates of the inpatient hospital market basket update and MFP adjustment), we would use such data, if appropriate, to determine the hospice payment update percentage for FY 2022 in the final rule.

Currently, the labor portion of the hospice payment rates are as follows: For RHC, 68.71 percent; for CHC, 68.71 percent; for GIP, 64.01 percent; and for IRC, 54.13 percent. As discussed in section III.B of this proposed rule, we are proposing to rebase and revise the labor shares for RHC, CHC, GIP and IRC using MCR data for freestanding hospices (CMS Form 1984–14, OMB Control Number 0938–0758) for 2018. We are proposing the labor portion of the payment rates to be: For RHC, 64.7 percent; for CHC, 74.6 percent; for GIP, 62.8 percent; and for IRC, 60.1 percent. The non-labor portion is equal to 100 percent minus the labor portion for each level of care. Therefore, we are proposing the non-labor portion of the payment rates to be as follows: For RHC, 35.3 percent; for CHC, 25.4 percent; for GIP, 37.2 percent; and for IRC, 39.9 percent.

3. Proposed FY 2022 Hospice Payment Rates

There are four payment categories that are distinguished by the location and intensity of the hospice services provided. The base payments are adjusted for geographic differences in wages by multiplying the labor share, which varies by category, of each base rate by the applicable hospice wage index. A hospice is paid the RHC rate for each day the beneficiary is enrolled in hospice, unless the hospice provides CHC, IRC, or GIP. CHC is provided during a period of patient crisis to maintain the patient at home; IRC is short-term care to allow the usual caregiver to rest and be relieved from caregiving; and GIP is to treat symptoms that cannot be managed in another setting.

As discussed in the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47172), we implemented two different RHC payment rates, one RHC rate for the first 60 days and a second RHC rate for days 61 and beyond. In addition, in that final rule, we implemented a SIA payment for RHC when direct patient care is provided by an RN or social worker during the last 7 days of the beneficiary's life. The SIA payment is equal to the CHC hourly rate multiplied by the hours of nursing or social work provided (up to 4 hours total) that occurred on the day of service, if certain criteria are met. In order to maintain budget neutrality, as required under section 1814(i)(6)(D)(ii) of the Act, the new RHC rates were adjusted by a service intensity add-on budget neutrality factor (SBNF). The SBNF is used to reduce the overall RHC rate in order to ensure that SIA payments are budget-neutral. At the beginning of every FY, SIA utilization is compared to the prior year in order calculate a budget neutrality adjustment.

In the FY 2017 Hospice Wage Index and Rate Update final rule (81 FR 52156), we initiated a policy of applying a wage index standardization factor to hospice payments in order to eliminate the aggregate effect of annual variations in hospital wage data. Typically, the wage index standardization factor is calculated using the most recent, complete hospice claims data available. However, due to the COVID–19 PHE, we looked at using the previous fiscal year's hospice claims data (FY 2019) to determine if there were significant differences between utilizing 2019 and 2020 claims data. The difference between using FY 2019 and FY 2020 hospice claims data was minimal. Therefore, we will continue our practice of using the most recent, complete hospice claims data available; that is we are using FY 2020 claims data for the FY 2022 payment rate updates. In order to calculate the wage index standardization factor, we simulate total payments using FY 2020 hospice utilization claims data with the FY 2021 wage index (pre-floor, pre-reclassified hospital wage index with the hospice floor, and a 5 percent cap on wage index decreases) and FY 2021 payment rates (that include the current labor shares) and compare it to our simulation of total payments using the FY 2022 hospice wage index (with hospice floor, without the 5 percent cap on wage index decreases) and FY 2021 payment rates (that include the current labor shares). By dividing payments for each level of care (RHC days 1 through 60, RHC days 61+, CHC, IRC, and GIP) using the FY 2021 wage index and payment rates for each level of care by the FY 2022 wage index and FY 2021 payment rates, we obtain a wage index standardization factor for each level of care. In order to calculate the labor share standardization factor we simulate total payments using FY 2020 hospice utilization claims data with the FY 2022 hospice wage index and the current labor shares and compare it to our simulation of total payments using the FY 2022 hospice wage index with the proposed revised labor shares. The wage index and labor share standardization factors for each level of care are shown in the Tables 12 and 13.

The proposed FY 2022 RHC rates are shown in Table 12. The proposed FY 2022 payment rates for CHC, IRC, and GIP are shown in Table 13.

TABLE 12: Proposed FY 2022 Hospice RHC Payment Rates

Code	Description	FY 2021 Payment Rates	SIA Budget Neutrality Factor	Wage Index Standardization Factor	Labor Share Standardization Factor	Proposed FY 2022 Hospice Payment Update	Proposed FY 2022 Payment Rates
651	Routine Home Care (days 1-60)	$199.25	1.0004	1.0002	0.9993	X 1.023	$203.81
651	Routine Home Care (days 61+)	$157.49	1.0005	1.0001	0.9988	X 1.023	$161.02

TABLE 13: Proposed FY 2022 Hospice CHC, IRC, and GIP Payment Rates

Code	Description	FY 2021 Payment Rates	Wage Index Standardization Factor	Labor Share Standardization Factor	Proposed FY 2022 Hospice Payment Update	Proposed FY 2022 Payment Rates
652	Continuous Home Care Full Rate = 24 hours of care	$1,432.41 ($59.68 per hour)	0.9998	1.0005	X 1.023	$1,465.79 ($61.07 per hour)
655	Inpatient Respite Care	$461.09	1.0007	1.0051	X 1.023	$474.43
656	General Inpatient Care	$1,045.66	1.0013	0.9993	X 1.023	$1,070.35

Sections 1814(i)(5)(A) through (C) of the Act require that hospices submit quality data, based on measures to be specified by the Secretary. In the FY 2012 Hospice Wage Index and Rate Update final rule (76 FR 47320 through 47324), we implemented a HQRP as required by those sections. Hospices were required to begin collecting quality data in October 2012, and submit that quality data in 2013. Section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that FY. The proposed FY 2022 rates for hospices that do not submit the required quality data would be updated by the proposed FY 2022 hospice payment update percentage of 2.3 percent minus 2 percentage points. These rates are shown in Tables 14 and 15.

TABLE 14: Proposed FY 2022 Hospice RHC Payment Rates for Hospices That DO NOT Submit the Required Quality Data

Code	Description	FY 2021 Payment Rates	SIA Budget Neutrality Factor	Wage Index Standardization Factor	Labor Share Standardization Factor	Proposed FY 2022 Hospice Payment Update of 2.3% minus 2 percentage points = +0.3%	Proposed FY 2022 Payment Rates
651	Routine Home Care (days 1-60)	$199.25	1.0004	1.0002	0.9993	X 1.003	$199.83
651	Routine Home Care (days 61+)	$157.49	1.0005	1.0001	0.9988	X 1.003	$157.87

TABLE 15: Proposed FY 2022 Hospice CHC, IRC, and GIP Payment Rates for Hospices That DO NOT Submit the Required Quality Data

Code	Description	FY 2021 Payment Rates	Wage Index Standardization Factor	Labor Share Standardization Factor	Proposed FY 2022 Hospice Payment Update of 2.3% minus 2 percentage points = +0.3%	Proposed FY 2022 Payment Rates
652	Continuous Home Care Full Rate= 24 hours of care	$1,432.41 ($59.68 / per hour)	0.9998	1.0005	X 1.003	$1,437.14 ($59.88 per hour)
655	Inpatient Respite Care	$461.09	1.0007	1.0051	X 1.003	$465.16
656	General Inpatient Care	$1,045.66	1.0013	0.9993	X 1.003	$1,049.43

4. Proposed Hospice Cap Amount for FY 2022

As discussed in the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47183), we implemented changes mandated by the IMPACT Act of 2014 (Pub. L. 113–185). Specifically, we stated that for accounting years that end after September 30, 2016 and before October 1, 2025, the hospice cap is updated by the hospice payment update percentage rather than using the CPI–U. Division CC, section 404 of the CAA 2021 has extended the accounting years impacted by the adjustment made to the hospice cap calculation until 2030. Therefore, for accounting years that end after September 30, 2016 and before October 1, 2030, the hospice cap amount is updated by the hospice payment update percentage rather than using the CPI–U. As a result of the changes mandated by Division CC, section 404 of the CAA 2021, we are proposing conforming regulation text changes at § 418.309 to reflect the new language added to section 1814(i)(2)(B) of the Act.

The proposed hospice cap amount for the FY 2022 cap year will be $31,389.66, which is equal to the FY 2021 cap amount ($30,683.93) updated by the proposed FY 2022 hospice payment update percentage of 2.3 percent.

D. Proposed Clarifying Regulation Text Changes for the Hospice Election Statement Addendum

In the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38484), we finalized modifications to the hospice election statement content requirements at § 418.24(b) to increase coverage transparency for patients under a hospice election. These changes included a new condition for payment requiring a hospice, upon request, to provide the beneficiary (or representative) an election statement addendum (hereafter called ''the addendum'') outlining the items, services, and drugs that the hospice has determined are unrelated to the terminal illness and related conditions. We stated in that final rule that the addendum is intended to complement the Hospice Conditions of Participation (CoPs) at § 418.52(a), which require hospices to verbally inform beneficiaries, at the time of hospice election, of the services covered under the Medicare hospice benefit, as well as the limitations of such services (84 FR 38509). The requirements at §§ 418.24(b) and 418.52(a) ensure that beneficiaries are aware of any items, services, or drugs they would have to seek outside of the benefit, as well as their potential out-of-pocket costs for hospice care, such as co-payments and/or coinsurance.

Section 418.24(c) sets forth the elements that must be included on the addendum:

1. The addendum must be titled ''Patient Notification of Hospice Non-Covered Items, Services, and Drugs'';

2. Name of the hospice;

3. Beneficiary's name and hospice medical record identifier;

4. Identification of the beneficiary's terminal illness and related conditions;

5. A list of the beneficiary's current diagnoses/conditions present on hospice admission (or upon plan of care update, as applicable) and the associated items, services, and drugs, not covered by the hospice because they have been determined by the hospice to be unrelated to the terminal illness and related conditions;

6. A written clinical explanation, in language the beneficiary and his or her representative can understand, as to why the identified conditions, items, services, and drugs are considered unrelated to the terminal illness and related conditions and not needed for pain or symptom management. This clinical explanation must be accompanied by a general statement that the decision as to what conditions, items, services, or drugs are unrelated is made for each individual patient, and that the beneficiary should share this clinical explanation with other health care providers from which he or she seeks services unrelated to his or her terminal illness and related conditions;

7. References to any relevant clinical practice, policy, or coverage guidelines;

8. Information on the following:

a. Purpose of the addendum

b. patient's right to immediate advocacy

9. Name and signature of the Medicare hospice beneficiary (or representative) and date signed, along with a statement that signing this addendum (or its updates) is only acknowledgement of receipt of the addendum (or its updates) and not necessarily the beneficiary's agreement with the hospice's determinations.

The hospice is required to furnish the addendum in writing in an accessible format,[23] so the beneficiary (or representative) can understand the information provided, make treatment decisions based on that information, and share such information with non-hospice providers rendering un-related items and services to the beneficiary. Therefore, the format of the addendum

[23] English and Spanish Version of the Hospice Addendum Model. *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice.*

must be usable for the beneficiary and/or representative. Although we stated in the FY 2020 Hospice Wage Index and Payment Rate Update that hospices may develop their own election statement addendum (84 FR 38507), we posted a modified model election statement and addendum on the Hospice Center web page,[21] along with the publication of the FY 2021 Hospice Wage Index and Payment Rate Update final rule (85 FR 47070). The intent was to provide an illustrative example as hospices can modify and develop their own forms to meet the content requirements. In the FY 2021 Hospice Wage Index and Payment Rate Update final rule, we stated that most often we would expect the addendum would be in a hard copy format the beneficiary or representative can keep for his or her own records, similar to how hospices are required by the hospice CoPs at § 418.52(a)(3) to provide the individual a copy of the notice of patient rights and responsibilities (85 FR 47091). The hospice CoPs at § 418.104(a)(2) state that the patient's record must include ''signed copies of the notice of patient rights in accordance with § 418.52.'' Likewise, since the addendum is part of the election statement as set forth in § 418.24(b)(6), then it is required to be part of the patient's record (if requested by the beneficiary or representative). The signed addendum is only acknowledgement of the beneficiary's (or representative's) receipt of the addendum (or its updates) and the payment requirement is considered met if there is a signed addendum (and any signed updates) in the requesting beneficiary's medical record with the hospice. We believe that a signed addendum connotes that the hospice discussed the addendum and its contents with the beneficiary (or representative). Additionally, in the event that a beneficiary (or representative) does not request the addendum, we expect hospices to document, in some fashion, that an addendum has been discussed with the patient (or representative) at the time of election, similar to how other patient and family discussions are documented in the hospice's clinical record. It is necessary for the hospice to document that the addendum was discussed and whether or not it was requested, in order to prevent potential claims denials related to any absence of an addendum (or addendum updates) in the medical record.

[21] Hospice Center web page. *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.*

Though we did not propose any changes to the election statement addendum content requirements at § 418.24(c), or the October 1, 2020 effective date, in the FY 2021 Hospice Wage Index and Payment Rate Update proposed rule, we solicited comments on the usefulness of the modified model election statement and addendum posted on the Hospice Center web page (85 FR 20949). In the FY 2021 Hospice Wage Index and Payment Rate Update final rule (85 FR 47093), we responded to comments received, and stated that, as finalized in the FY 2020 Hospice Wage Index and Payment Rate Update final rule, the hospice election statement addendum will remain a condition for payment that is met when there is a signed addendum (and its updates) in the beneficiary's hospice medical record.

Since its implementation on October 1, 2020, CMS has received additional inquiries from stakeholders asking for clarification on certain aspects of the addendum. We appreciate and understand the importance of provider input and involvement in ensuring that this document is effective in increasing coverage transparency for beneficiaries. Therefore, we are providing clarification on, and proposing modifications to, certain signature and timing requirements and proposing corresponding clarifying regulations text changes.

Currently the regulations at § 418.24(c) require that if a beneficiary or his or her representative requests the addendum at the time of the initial hospice election (that is, at the time of admission to hospice), the hospice must provide this information, in writing, to the individual (or representative) within 5 days from the date of the election. Hospices have reported that beneficiaries or representatives sometimes do not request the addendum at the time of election, but rather within the 5 days after the effective date of the election. In these situations, the regulations require the hospice to provide the addendum within 3 days, as the beneficiary requested the addendum during the course of care. However, in accordance with § 418.54(b), the hospice interdisciplinary group (IDG), in consultation with the individual's attending physician (if any), must complete the hospice comprehensive assessment no later than 5 calendar days after the election of hospice care. In some instances, this may mean that the hospice must furnish the addendum prior to completion of the comprehensive assessment. The comprehensive assessment includes all areas of hospice care related to the palliation and management of a beneficiary's terminal illness. This assessment is necessary because it provides an overview of the items, services and drugs that the patient is already utilizing as well as helps determine what the hospice may need to add in order to treat the patient throughout the dying process. If the addendum is completed prior to the comprehensive assessment, the hospice may not have a complete patient profile, which could potentially result in the hospice incorrectly anticipating the extent of covered and non-covered services and lead to an inaccurate election statement addendum. Hospice providers are only able to discern what items, services, and drugs they will not cover once they have a beneficiary's comprehensive assessment. We are proposing to allow the hospice to furnish the addendum within 5 days from the date of a beneficiary or representative request, if the request is within 5 days from the date of a hospice election. For example, if the patient elects hospice on December 1st and requests the addendum on December 3rd, the hospice would have until December 8th to furnish the addendum.

Additionally, hospices have noted that there is not a timeframe in regulations regarding the patient signature on the addendum. Section 418.24(c)(9) requires the beneficiary's signature (or his/her representative's signature) as well as the date the document was signed. We noted in the FY 2021 Hospice Wage Index & Payment Rate Update final rule that because the beneficiary signature is an acknowledgement of receipt of the addendum, this means the beneficiary would sign the addendum when the hospice provides it, in writing, to the beneficiary or representative (85 FR 47092). Additionally, obtaining the required signatures on the election statement has been a longstanding regulatory requirement. Therefore, we expect that hospices already have processes and procedures in place to ensure that required signatures are obtained, either from the beneficiary, or from the representative in the event the beneficiary is unable to sign. We anticipate that hospices would use the same procedures for obtaining signatures on the addendum. However, we understand that some beneficiaries or representatives may request an emailed addendum or request more time to review the addendum before signing, in which case the date that the hospice furnished the addendum to the beneficiary (or representative) may differ from the date that the beneficiary

or representative signs the addendum. This means the hospice may furnish the addendum within the required timeframe; however, the signature date may be beyond the required timeframe. Therefore, we propose to clarify in regulation that the ''date furnished'' must be within the required timeframe (that is, 3 or 5 days of the beneficiary or representative request, depending on when such request was made), rather than the signature date. At § 418.24(c)(10), we propose that the hospice would include the ''date furnished'' in the patient's medical record and on the addendum itself.

In the FY 2021 Hospice Wage Index and Payment Rate Update final rule, we addressed a concern regarding a potential situation wherein the beneficiary or representative refuses to sign the addendum (85 FR 47088). We reiterated that the signature on the addendum is only acknowledgement of receipt and not a tacit agreement of its contents, and that we expect the hospice to inform the beneficiary of the purpose of the addendum and rationale for the signature. However, we recognized that there might be rare instances in which the beneficiary (or representative) refuses to sign the addendum. We noted that we would consider whether this issue would require future rulemaking. We have subsequently received this question from stakeholders post implementation, therefore, in this proposed rule, we are clarifying that if a patient or representative refuses to sign the addendum, the hospice must document clearly in the medical record (and on the addendum itself) the reason the addendum is not signed in order to mitigate a claims denial for this condition for payment. In such a case, although the beneficiary has refused to sign the addendum, the ''date furnished'' must still be within the required timeframe (that is, within 3 or 5 days of the beneficiary or representative request, depending on when such request was made), and noted in the chart and on the addendum itself.

Stakeholders again requested that CMS clarify whether a non-hospice provider is required to sign the addendum in the event that the non-hospice provider requests the addendum rather than the beneficiary or representative. Therefore, if only a non-hospice provider or Medicare contractor requests the addendum (and not the beneficiary or representative) we would not expect a signed copy in the patient's medical record. Hospices can develop processes (including how to document such requests from non-hospice providers and Medicare contractors) to address circumstances in which the non-hospice provider or Medicare contractor requests the addendum, and the beneficiary or representative does not. As such, we are proposing to clarify in regulation that if a non-hospice provider requests the addendum, rather than the beneficiary or representative, the non-hospice provider is not required to sign the addendum.

There may be instances in which the beneficiary or representative requests the addendum and the beneficiary dies, revokes, or is discharged prior to signing the addendum. While we stated in the FY 2020 Hospice Wage Index and Payment Rate Update final rule, that if the beneficiary requests the election statement addendum at the time of hospice election but dies within 5 days, the hospice would not be required to furnish the addendum as the requirement would be deemed as being met in this circumstance (84 FR 38521), this policy was not codified in regulation. Therefore, we are proposing conforming regulations text changes at § 418.24(c) to reflect this policy. Furthermore, we propose to clarify at § 418.24(d)(4) that if the patient revokes or is discharged within the required timeframe (3 or 5 days after a request, depending upon when such request was made), but the hospice has not yet furnished the addendum, the hospice is not required to furnish the addendum. Similarly, we are proposing to clarify at § 418.24(d)(5) that in the event that a beneficiary requests the addendum and the hospice furnishes the addendum within 3 or 5 days (depending upon when the request for the addendum was made), but the beneficiary dies, revokes, or is discharged prior to signing the addendum, a signature from the individual (or representative) is no longer required. We would continue to expect that the hospice would note the date furnished in the patient's medical record and on the addendum, if the hospice has already completed the addendum, as well as an explanation in the patient's medical record noting that the patient died, revoked, or was discharged prior to signing the addendum.

Finally, we are proposing conforming regulations text changes at § 418.24(c) in alignment with subregulatory guidance indicating that hospices have ''3 days,'' rather than ''72 hours'' to meet the requirement when a patient requests the addendum during the course of a hospice election. Hospices must furnish the addendum no later than 3 calendar days after a beneficiary's (or representative's) request during the course of a hospice election. This means that hospice providers must furnish the addendum to the beneficiary or representative on or before the third day after the date of the request. For example, if a beneficiary (or representative) requests the addendum on February 22nd, then the hospice will have until February 25th to furnish the addendum, regardless of what time the addendum was requested on February 22nd. The intent of this clarification is to better align with the requirement for furnishing an election statement addendum when the addendum is requested within 5 days of the date of election, which also uses ''days'' rather than ''hours''.

We are soliciting comments on these proposed clarifications and conforming regulation text changes.

E. Hospice Waivers Made Permanent Conditions of Participation

1. Background

In order to support provider and supplier communities due to the COVID–19 PHE, CMS has issued an unprecedented number of regulatory waivers under our statutory authority set forth at section 1135 of the Act. Under section 1135 of the Act, the Secretary may temporarily waive or modify certain Medicare, Medicaid, and Children's Health Insurance Program (CHIP) requirements to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the programs in the emergency area and time periods, and that providers who furnish such services in good faith, but who are unable to comply with one or more requirements as described under section 1135(b) of the Act, can be reimbursed and exempted from sanctions for violations of waived provisions (absent any determination of fraud or abuse). The intent of these waivers was to expand healthcare system capacity while continuing to maintain public and patient safety, and to hold harmless providers and suppliers unable to comply with existing regulations after a good faith effort.

While some of these waivers simply delay certain administrative deadlines, others directly affect the provision of patient care. The utilization and application of these waivers pushed us to consider whether permanent changes would be beneficial to patients, providers, and professionals. We identified selected waivers as appropriate candidates for formal regulatory changes. Those proposed changes and their respective histories and background information are discussed in detail in section II. E of this rule. We are also proposing regulatory

changes that are not directly related to PHE waivers but would clarify or align some policies that have been raised as concerns by stakeholders.

We are proposing the following revisions to the hospice Conditions of Participation (CoPs).

2. Hospice Aide Training and Evaluation—Using Pseudo-Patients

Hospice aides deliver a significant portion of direct care. Aides are usually trained by an employer, such as a hospice, home health agency (HHA) or nursing home and may already be certified as an aide prior to being hired. The competency of new aides must be evaluated by the hospice to ensure appropriate care can be provided by the aide. Aide competency evaluations should be conducted in a way that identifies and meets training needs of the aide as well as the patient's needs. These evaluations are a critical part of providing safe, quality care. In September of 2019, we published a final rule that allows the use of the pseudo-patient for conducting home health aide competency evaluations (''Medicare and Medicaid Programs; Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction; Fire Safety Requirements for Certain Dialysis Facilities; Hospital and Critical Access Hospital (CAH) Changes To Promote Innovation, Flexibility, and Improvement in Patient Care'' (84 FR 51732)). The ability to use pseudo-patients during aide competency evaluations allows greater flexibility and may reduce burden on suppliers. We believe that hospices and their patients would also benefit from the ability to use pseudo-patients in aide training.

The current hospice aide competency standard regulations at § 418.76(c)(1) requires the aide to be evaluated by observing an aide's performance of the task with a patient. We propose to make similar changes to hospice aide competency standards to those already made with respect to HHAs (see § 484.80(c)) in our hospice regulations at § 418.76(c)(1)), which describes the process for conducting hospice aide competency evaluations, and propose to define both ''pseudo-patient'' and ''simulation'' at § 418.3. Thus, we are proposing to permit skill competencies to be assessed by observing an aide performing the skill with either a patient or a pseudo-patient as part of a simulation. The proposed definitions are as follows:

- ''Pseudo-patient'' means a person trained to participate in a role-play situation, or a computer-based mannequin device. A pseudo-patient must be capable of responding to and interacting with the hospice aide trainee, and must demonstrate the general characteristics of the primary patient population served by the hospice in key areas such as age, frailty, functional status, cognitive status and care goals.
- ''Simulation'' means a training and assessment technique that mimics the reality of the homecare environment, including environmental distractions and constraints that evoke or replicate substantial aspects of the real world in a fully interactive fashion, in order to teach and assess proficiency in performing skills, and to promote decision making and critical thinking.

These proposed changes would allow hospices to utilize pseudo-patients, such as a person trained to participate in a role-play situation or a computer-based mannequin device, instead of actual patients, in the competency testing of hospice aides for those tasks that must be observed being performed on a patient. This could increase the speed of performing competency testing and would allow new aides to begin serving patients more quickly while still protecting patient health and safety.

3. Hospice Aid Training and Evaluation—Targeting Correction of Deficiencies

We are also proposing to amend the requirement at § 418.76(h)(1)(iii) to specify that if an area of concern is verified by the hospice during the on-site visit, then the hospice must conduct, and the hospice aide must complete, a competency evaluation of the deficient skill and all related skill(s) in accordance with § 418.76(c). This proposed change would permit the hospice to focus on the hospice aides' specific deficient and related skill(s) instead of completing another full competency evaluation. We believe when a deficient area(s) in the aide's care is assessed by the RN, there may be additional related competencies that may also lead to additional deficient practice areas. For example, if a patient's family informed the nurse that the patient almost fell when the aide was transferring the patient to a chair; the nurse could assess the aide's transferring technique to determine whether there was any improper form. The hospice must also conduct, and the hospice aide must complete, a competency evaluation related to the deficient and related transferring skills; such as transferring from bed to bedside commode or shower chair.

We request public comment on our proposed changes to allow for the use of the pseudo patient for conducting hospice aide competency testing, and the proposed change to allow the hospice to focus on the hospice aides' specific deficient skill(s) instead of completing a full competency evaluation. We especially welcome comments from hospices that implemented the use of pseudo-patients during the COVID–19 PHE and the additional proposal, that if an area of concern is verified by the hospice during the on-site visit, then the hospice must conduct, and the hospice aide must complete, a competency evaluation related to the deficient and related skill(s).

F. Proposals and Updates to the Hospice Quality Reporting Program

1. Background and Statutory Authority

The Hospice Quality Reporting Program (HQRP) specifies reporting requirements for both the Hospice Item Set (HIS) and Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Hospice Survey. Section 1814(i)(5) of the Act requires the Secretary to establish and maintain a quality reporting program for hospices. Section 1814(i)(5)(A)(i) of the Act was amended by section 407(b) of Division CC, Title IV of the CAA 2021 (Pub. L. 116–260) to change the payment reduction for failing to meet hospice quality reporting requirements from 2 to 4 percentage points. This policy will apply beginning with FY 2024 annual payment update (APU). Specifically, the Act requires that, beginning with FY 2014 through FY 2023, the Secretary shall reduce the market basket update by 2 percentage points and beginning with the FY 2024 APU and for each subsequent year, the Secretary shall reduce the market basket update by 4 percentage points for any hospice that does not comply with the quality data submission requirements for that FY.

In addition, section 407(a)(2) of the CAA 2021 removes the prohibition on public disclosure of hospice surveys performed be a national accreditation agency in section 1865(b) of the Act, thus allowing the Secretary to disclose such accreditation surveys. In addition, section 407(a)(1) of the CAA 2021 adds new requirements in newly added section 1822(a)(2) to require each state and local survey agency, and each national accreditation body with an approved hospice accreditation program, to submit information respecting any survey or certification made with respect to a hospice program. Such information shall include any inspection report made by such survey agency or body with respect to such survey or certification, any enforcement

actions taken as a result of such survey or certification, and any other information determined appropriate by the Secretary. This information will be published publicly on our website, such as Care Compare, in a manner that is easily accessible, readily understandable, and searchable no later than October 1, 2022. In addition, national accreditation bodies with approved hospice accreditation programs described above are required to use the same survey form used by state and local survey agencies, which is currently the Form CMS–2567, on or after October 1, 2021.

Depending on the amount of the annual update for a particular year, a reduction of 2 percentage points through FY 2023 or 4 percentage points beginning in FY 2024 could result in the annual market basket update being less than zero percent for a FY and may result in payment rates that are less than payment rates for the preceding FY. Any reduction based on failure to comply with the reporting requirements, as required by section 1814(i)(5)(B) of the Act, would apply only for the specified year. Any such reduction would not be cumulative nor be taken into account in computing the payment amount for subsequent FYs.

Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. The data must be submitted in a form, manner, and at a time specified by the Secretary. Any measures selected by the Secretary must have been endorsed by the consensus-based entity which holds a performance measurement contract with the Secretary under section 1890(a) of the Act. This contract is currently held by the National Quality Forum (NQF). However, section 1814(i)(5)(D)(ii) of the Act provides that in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the consensus-based entity, the Secretary may specify measures that are not endorsed, as long as due consideration is given to measures that have been endorsed or adopted by a consensus-based organization identified by the Secretary. Section 1814(i)(5)(D)(iii) of the Act requires that the Secretary publish selected measures applicable with respect to FY 2014 no later than October 1, 2012.

In the FY 2014 Hospice Wage Index and Payment Rate Update final rule (78 FR 48234), and in compliance with section 1814(i)(5)(C) of the Act, we finalized the specific collection of data items that support the seven NQF-endorsed hospice measures described in Table 1. In addition, we finalized the Hospice Visits When Death is Imminent measure pair (HVWDII, Measure 1 and Measure 2) in the FY 2017 Hospice Wage Index and Payment Rate Update final rule, effective April 1, 2017. We refer the public to the FY 2017 Hospice Wage Index and Payment Rate Update final rule (81 FR 52144) for a detailed discussion.

The CAHPS Hospice Survey is a component of the CMS HQRP, which is used to collect data on the experiences of hospice patients and their family caregivers listed in their hospice records. Readers who want more information about the development of the survey, originally called the Hospice Experience of Care Survey, may refer to 79 FR 50452 and 78 FR 48261. National implementation of the CAHPS Hospice Survey commenced January 1, 2015, as stated in the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50452).

The CAHPS Hospice Survey measures received NQF endorsement on October 26, 2016 and was re-endorsed November 20, 2020 (NQF #2651). NQF endorsed six composite measures and two overall measures from the CAHPS Hospice Survey. Along with nine HIS-based quality measures, the CAHPS Hospice Survey measures are publicly reported on a designated CMS website that is currently Care Compare. Table 16 lists all quality measures currently adopted for the HQRP.

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TABLE 16: Quality Measures Currently Adopted for the Hospice Quality Reporting Program

Hospice Item Set		
NQF#	**Short name**	**Data collection began**
1617	Patients Treated with an Opioid who are Given a Bowel Regimen	October 1, 2014
1634	Pain Screening	October 1, 2014
1637	Pain Assessment	October 1, 2014
1638	Dyspnea Treatment	October 1, 2014
1639	Dyspnea Screening	October 1, 2014
1641	Treatment Preferences	October 1, 2014
1647	Beliefs/Values Addressed (if desired by the patient)	October 1, 2014
Not applicable	Hospice Visits when Death is Imminent (HVWDII) • *Measure 1* – Percent of patients receiving at least one visit from registered nurses, physicians, nurse practitioners, or physician assistants in the last three days of life. • *Measure 2* - Measure 2: Percentage of patients receiving at least two visits from medical social workers,	April 1, 2017

	chaplains or spiritual counselors, licensed practical nurses or hospice aides in the last seven days of life.	
3235	Hospice and Palliative Care Composite Process Measure—HIS-Comprehensive Assessment Measure at Admission includes: 1. Patients Treated with an Opioid who are Given a Bowel Regimen (NQF #1617) 2. Pain Screening (NQF#1634) 3. Pain Assessment (NQF #1637) 4. Dyspnea Treatment (NQF #1638) 5. Dyspnea Screening (NQF# 1639) 6. Treatment Preferences (NQF #1641) 7. Beliefs/Values Addressed (if desired by the patient) (NQF# 1647)	April 1, 2017
CAHPS Hospice Survey		
NQF#	**Short Name**	**Data collection began**
2651	CAHPS Hospice Survey – single measure • Communication with Family • Getting timely help • Treating patient with respect • Emotional and spiritual support • Help for pain and symptoms • Training family to care for the patient • Rating of this hospice • Willing to recommend this hospice	January 1, 2015

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The Hospice and Palliative Care Composite Process Measure—HIS-Comprehensive Assessment at Admission measure (hereafter referred to as ''the HIS Comprehensive Assessment Measure'') underwent an off-cycle review by the NQF Palliative and End-of-Life Standing Committee and successfully received NQF endorsement in July 2017 (NQF 3235). The HIS Comprehensive Assessment Measure captures whether multiple key care processes were delivered upon patients' admissions to hospice in one measure as described in the Table 1. NQF 3235 does not require NQF's endorsements of the previous components to remain valid. Thus, if the components included in NQF 3235 do not individually maintain endorsement, the endorsement status of NQF 3235, as a single measure, will not change.

In the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47142), we finalized the policy for retention of HQRP measures adopted for previous payment determinations and seven factors for measure removal. In that same final rule, we discussed that we will issue public notice, through rulemaking, of measures under consideration for removal, suspension, or replacement. However, if there is reason to believe continued collection of a measure raises potential safety concerns, we will take immediate action to remove the measure from the HQRP and will not wait for the annual rulemaking cycle. Such measures will be promptly removed and we will immediately notify hospices and the public of our decision through the usual HQRP communication channels, including but not limited to listening sessions, email notification, Open Door Forums, HQRP Forums, and Web postings. In such instances, the removal of a measure will be formally announced in the next annual rulemaking cycle.

In the FY 2019 Hospice Wage Index and Rate Update final rule (83 FR 38622), we also adopted an eighth factor for removal of a measure. This factor aims to promote improved health outcomes for beneficiaries while minimizing the overall costs associated with the program. These costs are multifaceted and include the burden associated with complying with the program. The finalized reasons for removing quality measures are:

1. Measure performance among hospices is so high and unvarying that meaningful distinctions in improvements in performance can no longer be made;

2. Performance or improvement on a measure does not result in better patient outcomes;

3. A measure does not align with current clinical guidelines or practice;

4. A more broadly applicable measure (across settings, populations, or conditions) for the particular topic is available;

5. A measure that is more proximal in time to desired patient outcomes for the particular topic is available;

6. A measure that is more strongly associated with desired patient outcomes for the particular topic is available;

7. Collection or public reporting of a measure leads to negative unintended consequences; or

8. The costs associated with a measure outweighs the benefit of its continued use in the program.

On August 31, 2020, we added correcting language to the FY 2016 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements; Correcting Amendment (85 FR 53679) hereafter referred to as the FY 2021 HQRP Correcting Amendment. In this final rule, we made correcting amendments to 42 CFR 418.312 to correct technical errors

identified in the FY 2016 Hospice Wage Index and Payment Rate Update final rule. Specifically, the FY 2021 HQRP Correcting Amendment (85 FR 53679) adds paragraph (i) to § 418.312 to reflect our exemptions and extensions requirements, which were referenced in the preamble but inadvertently omitted from the regulations text. Thus, these exemptions or extensions can occur when a hospice encounters certain extraordinary circumstances.

As stated in the FY 2019 Hospice Wage Index and Rate Update final rule (83 FR 38622), we launched the Meaningful Measures initiative (which identifies high priority areas for quality measurement and improvement) to improve outcomes for patients, their families, and providers while also reducing burden on clinicians and providers. More information about the Meaningful Measures initiative can be found at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/MMF/General-info-Sub-Page.html.*

In the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38484), we discussed our interest in developing quality measures using claims data, to expand data sources for quality measure development. While we acknowledged in that rule the limitations with using claims data as a source for measure development, there are several advantages to using claims data as part of a robust HQRP as discussed previously in the FY 2020 rule. We also discussed developing the Hospice Outcomes & Patient Evaluation (HOPE), a new patient assessment instrument that is planned to replace the HIS. See an update on HOPE development in section III.F.6, Update regarding the Hospice Outcomes & Patient Evaluation (HOPE) development.

We also discussed our interest in outcome quality measure development. Unlike process measures, outcome measures capture the results of care as experienced by patients, which can include aspects of a patient's health status and their experiences in the health system. The portfolio of quality measures in the HQRP will include outcome measures that reflect the results of care.

2. Proposal To Remove the Seven ''Hospice Item Set Process Measures'' From HQRP Beginning FY 2022

In the FY 2014 Hospice Wage Index and Payment Rate Update final rule (78 FR 48234), and in compliance with section 1814(i)(5)(C) of the Act, we finalized the specific collection of standardized data items, known as the HIS, that support the following NQF-endorsed measures:

- NQF #1617 Patients Treated with an Opioid who are Given a Bowel Regimen
- NQF #1634 Pain Screening
- NQF #1637 Pain Assessment
- NQF #1638 Dyspnea Treatment
- NQF #1639 Dyspnea Screening
- NQF #1641 Treatment Preferences
- NQF #1647 Beliefs/Values Addressed (if desired by the patient)

These measures were adopted to increase public awareness of key components of hospice care, such as pain and symptom management and non-clinical care needs. Consistent with our policy for measure retention and removal, finalized in the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47142), we reviewed these measures against the factors for removal. Our analysis found that they meet factor 4: ''A more broadly applicable measure (across settings, populations, or conditions) for the particular topic is available.'' We determined that the NQF #3235 HIS Comprehensive Assessment Measure, discussed in detail in the FY 2017 Hospice Wage Index and Payment Rate Update final rule (81 FR 52144), is a more broadly applicable measure and continues to provide, in a single measure, meaningful differences between hospices regarding overall quality in addressing the physical, psychosocial, and spiritual factors of hospice care upon admission.

The HIS Comprehensive Assessment Measure's ''all or none'' criterion requires hospices to perform all seven care processes in order to receive credit. In this way, it is different from an average-based composite measure and sets a higher bar for performance. This single measure differentiates hospices and holds them accountable for completing all seven process measures to ensure core services of the hospice comprehensive assessment are completed for all hospice patients. Therefore, the HIS Comprehensive Assessment Measure continues to encourage hospices to improve and maintain high performance in all seven processes simultaneously, rather than rely on its component measures to demonstrate quality hospice care in a way that may be hard to interpret for consumers. The individual measures show performance for only one process and do not demonstrate whether the hospice provides high-quality care overall, as an organization. For example, a hospice may perform extremely well assessing treatment preferences, but poorly on addressing pain. High-quality hospice care not only manages pain and symptoms of the terminal illness, but assesses non-clinical needs of the patient and family caregivers, which is a hallmark of patient-centered care. Since the HIS Comprehensive Assessment Measure captures all seven processes collectively, we believe that public display of the individual component measures are not necessary.

The interdisciplinary, holistic scope of the NQF #3235 HIS Comprehensive Assessment Measure aligns with the public's expectations for hospice care. In addition, the measure supports alignment across our programs and with other public and private initiatives. The seven individual components address care processes around hospice admission that are clinically recommended or required in the hospice CoPs. The Medicare Hospice CoPs require that hospice comprehensive assessments identify patients' physical, psychosocial, emotional, and spiritual needs and address them to promote the hospice patient's comfort throughout the end-of-life process. Furthermore, the person-centered, family, and caregiver perspective align with the domains identified by the CoPs and the National Consensus Project [22] as patients and their family caregivers also place value on physical symptom management and spiritual/psychosocial care as important factors at the end-of-life. The HIS Comprehensive Assessment Measure is a composite measure that serves to ensure all hospice patients receive a comprehensive assessment for both physical and psychosocial needs at admission.

In addition, MedPAC's Report to Congress: Medicare Payment Policy [23] over the past few years notes that the HIS Comprehensive Assessment Measure differentiates the hospice's overall ability to address care processes better than the seven individual HIS process measures. In this way, it provides consumers viewing data on Care Compare with a streamlined way to

[22] The National Consensus Project Guidelines expand on the eight domains of palliative care in the 3rd edition and include clinical and organizational strategies, screening and assessment elements, practice examples, tools and resources. The guidelines were developed by the National Consensus Project for Quality Palliative Care, comprising 16 national organizations with extensive expertise in and experience with palliative care and hospice, and were published by the National Coalition for Hospice and Palliative Care. Journal of Hospice & Palliative Nursing: December 2018—Volume 20—Issue 6—p 507.

[23] MedPAC. (2020). *Chapter 12: Hospice Services. http://medpac.gov/docs/default-source/reports/mar20_medpac_ch12_sec.pdf.*

assess the extent to which a hospice follows care processes.

We are not proposing any revisions to the HIS Comprehensive Assessment Measure in this proposed rule because the single measure continues to provide value to patients, their families, and providers.

Because the HIS Comprehensive Assessment Measure is a more broadly applicable measure, we propose to remove the seven individual HIS process measures from the HQRP, no longer publicly reporting them as individual measures on Care Compare beginning with FY 2022. In addition, we are proposing to remove the ''7 measures that make up the HIS Comprehensive Assessment Measure'' section of Care Compare, which displays the seven HIS measures. We propose to make these changes removing the seven HIS process measures as individual measures from HQRP no earlier than May 2022.

Although this proposal removes the seven individual HIS process measures, it does not propose any changes to the requirement to submit the HIS admission assessment. Since the HIS Comprehensive Assessment Measure is a composite of the seven HIS process measures, the burden and requirement to report the HIS data remain unchanged in the time, manner, and form finalized in the FY 2017 Hospice Wage Index and Rate Update final rule (81 FR 52144). Hospices which do not report HIS data used for the HIS Comprehensive Assessment Measure will not meet the requirements for compliance with the HQRP.

We are soliciting public comment on the proposal to remove the seven HIS process quality measures as individual measures from the HQRP no earlier than May 2022, and to continue including the seven HIS process measures in the confidential quality measure (QM) Reports which are available to hospices. The seven HIS process measures are also available by visiting the data catalogue at *https://data.cms.gov/provider-data/topics/hospice-care.* We are also seeking public comment on the technical correction to the regulation at § 418.312(b) effective October 1, 2021.

3. Proposal To Add a ''Claims-Based Index Measure'', the Hospice Care Index

We are proposing a new hospice quality measure, called the Hospice Care Index (HCI), which will provide more information to better reflect several processes of care during a hospice stay, and better empower patients and family caregivers to make informed health care decisions. The HCI is a single measure comprising ten indicators calculated from Medicare claims data. The index design of the HCI simultaneously monitors all ten indicators. Collectively these indicators represent different aspects of hospice service and thereby characterize hospices comprehensively, rather than on just a single care dimension. Therefore, the HCI composite yields a more reliable provider ranking.

The HCI indicators, through the composite, would add new information to HQRP that was either directly recommended for CMS to publicly report by Federal stakeholders [23] [24] or identified as areas for improvement during information gathering activities. Furthermore, each indicator represents either a domain of hospice care recommended by leading hospice and quality experts [25] for CMS to publicly report, or a requirement included in the hospice CoPs. The indicators required to calculate the single composite are discussed in the ''Specifications for the HCI Indicators Selected'' section below. These specifications list all the information required to calculate each indicator, including the numerator and denominator definitions, different thresholds for receiving credit toward the overall HCI score, and explanations for those thresholds. Indicators reflect practices or outcomes hospices should pursue, thereby awarding points based on the criterion. The HCI scoring example in Table 16 illustrates how points are awarded based on meeting the criterion of the indicator. For example, Gaps in Nursing Visits have a criterion of ''lower than the 90th percentile,'' and supports the hospice CoPs that require a member of the interdisciplinary team to ensure ongoing assessment of patient and caregiver needs and plan of care implementation. Other indicators, such as nurse visits on weekends or near death, have a criterion of ''higher than the 10th percentile,'' identifying hospice care delivery during the most vulnerable periods during a hospice stay.

Each indicator equally affects the single HCI score, reflecting the equal importance of each aspect of care delivered from admission to discharge. A hospice is awarded a point for meeting each criterion for each of the 10 indicators. The sum of the points earned from meeting the criterion of each indictor results in the hospice's HCI score, with 10 as the highest hospice score. The ten indicators, aggregated into a single HCI score, convey a broad overview of the quality of hospice care provision and validates well with CAHPS Willingness to Recommend and Rating of this Hospice.

The HCI will help to identify whether hospices have aggregate performance trends that indicate higher or lower quality of care relative to other hospices. Together with other measures already publicly reported in the HQRP, HCI scores will help patients and family caregivers better decide between hospice providers based on the factors that matter most to them. Additionally, creating a comprehensive quality measure capturing a variety of related care processes and outcomes in a single metric will provide consumers and providers an efficient way to assess the overall quality of hospice care, which can be used to meaningfully and easily compare hospice providers to make a better-informed health care decision.

The HCI will complement the existing HIS Comprehensive Measure and does not replace any existing reported measures. Both the HCI and the HIS Comprehensive Measure are composite measures in that they act as single measures that capture multiple areas of hospice care. Because the indicators comprising the HCI differ in data source from the HIS Comprehensive Measure, the HCI and the HIS Comprehensive Measure can together provide a meaningful and efficient way to inform patients and family caregivers, and support their selection of hospice care providers. As a claims-based measure, the HCI measure would not impose any new collection of information requirements. To learn more about the background of the HCI, please watch this video: *https://youtu.be/by68E9E2cZc*.

a. Measure Importance

The FY 2019 Hospice Wage Index and Payment Rate Update final rule (83 FR 38622) introduced the Meaningful Measure Initiative to hospice providers to identify high priority areas for quality measurement and improvement. The Meaningful Measure Initiative areas are intended to increase measure alignment across programs and other public and private initiatives. Additionally, the initiative points to high priority areas where there may be informational gaps in available quality measures, while helping guide our efforts to develop and implement quality measures to fill those gaps, and develop those concepts towards quality measures that meet standards for public reporting. The goal of HQRP quality measure development is to identify measures from a variety of data sources that provide a window into

[23] 2019: Vulnerabilities in Hospice Care (Office of the Inspector General).

[24] Report to Congress: Medicare Payment Policy (March 2019) MEDPAC.

[25] 2019: Vulnerabilities in Hospice Care (Office of the Inspector General).

hospice care throughout the dying process, fit well with the hospice business model, and meet the objectives of the Meaningful Measures initiative.

To that end, the HCI seeks to add value to the HQRP by filling informational gaps in aspects of hospice service not addressed by the current measure set. Consistent with the Meaningful Measure Initiative, we conducted a number of information gathering activities to identify informational gaps. Our information gathering activities included soliciting feedback from hospice stakeholders such as providers and family caregivers; seeking input from hospice and quality experts through a Technical Expert Panel (TEP); interviews with hospice quality experts; considering public comments received in response to previous solicitations on claims-based hospice quality initiatives; and a review of quality measurement recommendations offered by the OIG, MedPAC, and the peer-reviewed literature.

We found that hospices currently underutilize HQRP measures to inform their quality improvement, mainly because of gaps in relevant quality information within the HQRP measure set. In particular, the existing HQRP measure set, calculated using data collected from the HIS and the CAHPS Hospice survey, does not assess quality of hospice care during a hospice election (between admission and discharge). Moreover, the current measure set does not directly address the full range of hospice services or outcomes. Therefore, we have identified a need for a new quality measure to address this gap and reflect care delivery processes during the hospice stay using available data without increasing data collection burden.

Claims data are the best available data source for measuring care during the hospice stay and present an opportunity to bridge the quality measurement gap that currently exists between the HIS and CAHPS Hospice Survey. Medicare claims are administrative records of health care services provided and payments which Medicare (and beneficiaries as applicable) made for those services. Claims are a rich and comprehensive source about many care processes and aspects of health care utilization. As such, they are a valuable source of information that can be used to measure the quality of care provided to beneficiaries for several reasons:

- Claims data are readily-available and reduce provider burden for implementation, as opposed to data collection through patient assessments or surveys, which require additional effort from clinicians, patients, and family caregivers before they can be submitted and used by CMS.
- Claims data are collected based on care delivered, providing a more direct reflection of care delivery decisions and actions than patient assessments or surveys.
- Claims data are considered a reliable source of standardized data about the services provided, because providers must comply with Medicare payment and claims processing policy.

Currently, CMS does publicly report several pieces of information derived from hospice claims data in the HQRP on Care Compare, including (i) the levels of care the hospice provided, (ii) the primary diagnoses the hospice served, (iii) the sites of service hospices provided care, and (iv) the hospice's daily census.

In the FY2018 Hospice Wage Index & Payment Rate proposed rule (82 FR 20750), we solicited public comment on two high-priority claims-based measure concepts being considered at the time, one which looked at transitions from hospice and another which examined access to higher levels of hospice care. In response to this solicitation, CMS received public comments highlighting the potential limitations of a single concept claims-based measure. In particular, a single-concept claims-based measure may not adequately account for all relevant circumstances that might influence a hospice's performance. While external circumstances could justify a hospice's poor performance on a single claims-based indicator, it would be unlikely for external circumstances to impact multiple claims-based indicators considered simultaneously. Therefore, the results of a multi-indicator claims-based index, such as HCI, is more likely to differentiate hospices than a single claims-based indicator. Taking this public feedback into consideration, we designed the HCI and developed the specifications based on simulated reporting periods.

b. Specifications for the HCI Indicators Selected

The specifications for the ten indicators required to calculate the single HCI score are described in this section. These component indicators reflect various elements and outcomes of care provided between admission and discharge. The HCI uses information from all ten indicators to collectively represent a hospice's ability to address patients' needs, best practices hospices should observe, and/or care outcomes that matter to consumers. Each indicator is a key component of the HCI measure that we are proposing, and all ten are necessary to derive the HCI score. We use analytics, based on a variety of data files, to specify the indicators and measure. These data files include:

- Medicare fee-for-service (FFS) hospice claims with through dates on and between October 1, 2016 and September 30, 2019 to determine information such as hospice days by level of care, provision of visits, live discharges, hospice payments, and dates of hospice election.
- Medicare fee-for-service inpatient claims with through dates on and between January 1, 2016 and December 31, 2019 to determine dates of hospitalization.
- Medicare beneficiary summary file to determine dates of death.
- Provider of Services (POS) File to examine trends in the scores of the HCI and its indicators, including by decade by which the hospice was certified for Medicare, ownership status, facility type, census regions, and urban/rural status.
- CAHPS Hospice Survey to examine alignment between the survey outcomes and the HCI.

We acquired all claims data from the Chronic Conditions Warehouse (CCW) Virtual Research Data Center (VRDC). We obtained the hospice claims and the Medicare beneficiary summary file in May 2020, and the inpatient data in August 2020. We obtained the POS file data via: *https://www.cms.gov/Research-Statistics-Data-and-Systems/Downloadable-Public-Use-Files/Provider-of-Services.* We obtained the Hospice-aggregate CAHPS Hospice Survey outcome data via: *https://data.cms.gov/provider-data.* We performed analyses using Stata/MP Version 16.1.

Table 17 indicates the number of hospice days, hospice claims, beneficiaries enrolled in hospices and hospices with at least one claim represented in each year of our analysis. Analysis for each year was based on the FY calendar. For example, FY 2019 covers claims with dates of services on or between October 1, 2018 and September 30, 2019. For these analyses, we exclude claims from hospices with 19 or fewer discharges [26] within a FY. The table reports the sample size before and after exclusion.[27]

[26] We count discharges as any claim with a discharge status code other than ''30'' (which is defined as ''Still Patient'')

[27] Another exclusion was made prior to reporting the numbers in Table B.1. We exclude all claims for a beneficiary if a beneficiary ever had two overlapping hospice days on separate claims. For FY 2019 this removes 5,212,319 hospice days that come from 218,420 claims and 33,009 beneficiaries.

TABLE 17: Sample Size for Analyses by Federal Fiscal Year (FY)

	FY 2018		FY 2019	
Excluding claims from hospices with <20 discharges	**Before Exclusion**	**After Exclusion**	**Before Exclusion**	**After Exclusion**
Number of hospice days represented	106,406,018	105,750,624	113,762,656	113,085,444
Number of claims	4,775,310	4,747,725	5,048,355	5,019,848
Number of beneficiaries represented	1,522,290	1,515,186	1,569,350	1,562,003
Number of hospices represented	4,623	4,004	4,796	4,155

The rest of this section presents the component indicators and their specifications. Although we describe each component indicator separately, the HCI is a composite that can only be calculated using all 10 indicators combined. We believe that, composed of this set of ten indicators, the HCI will strengthen the HQRP by comprehensively, reflecting hospices' performance across all ten indicators.

(1). Indicator One: Continuous Home Care (CHC) or General Inpatient (GIP) Provided

Medicare Hospice Conditions of Participation (CoPs) require hospices to be able to provide both CHC and GIP levels of care, if needed to manage more intense symptoms.[28] [29] However, a 2013 OIG report [30] found that 953 hospice programs did not provide any GIP level of care services, and it was unclear if dying patients at such hospices were receiving appropriate pain control or symptoms management (a similar concern exists for hospice services at the CHC level). To consider the provision of adequate services needed to manage patients' symptoms, the HCI measure includes an indicator for whether hospice programs provided any CHC or GIP service days. This indicator identifies hospices that provided at least one day of hospice care under the CHC or the GIP levels of care during the period examined. The provision of CHC and GIP is identified on hospice claims by the presence of revenue center codes 0652 (CHC) and 0656 (GIP).

The specifications for Indicator One, CHC or GIP services provided, are as follows:

- Numerator: The total number of CHC or GIP services days provided by the hospice within a reporting period.
- Denominator: The total number of hospice service days provided by the hospice at any level of care within a reporting period.
- Index Earned Point Criterion: Hospices earn a point towards the HCI if they provided at least one CHC or GIP service day within a reporting period.

(2). Indicator Two: Gaps in Nursing Visits

The Medicare Hospice CoPs require a member of the interdisciplinary team to ensure ongoing assessment of patient and caregiver needs and plan of care implementation.[31] The OIG has found instances of infrequent visits by nurses to hospice patients.[32] To assess patients' receipt of adequate oversight, one HCI indicator examines hospices that have a high rate of patients who are not seen at least once a week by nursing staff.

This indicator identifies whether a hospice is below the 90th percentile in terms of how often hospice stays of at least 30 days contain at least one gap of eight or more days without a nursing visit. Days of hospice service are identified based on the presence of revenue center codes 0651 (routine home care (RHC)), 0652 (CHC), 0655 (inpatient respite care (IRC)), and 0656 (GIP) on hospice claims. We identify the dates billed for RHC, IRC, and GIP by examining the corresponding revenue center date (which identifies the first day in the sequence of days by level of care) and the revenue center units (which identify the number of days (including the first day) in the sequence of days by level of care). We identify the dates billed for CHC by examining the revenue center date.[33] We define a hospice stay by a sequence of consecutive days for a particular beneficiary that are billed under the hospice benefit. A gap of at least 1 day without hospice ends the sequence. For this indicator, we identified hospice stays that included 30 or more consecutive days of hospice. Once we identified those hospice stays, we examined the timing of the provision of nursing visits within those stays. We identified nursing visits if we observed any of the following criteria:

- The presence of revenue center code 055x (Skilled Nursing) on the hospice claim. The date of the visit is recorded in the corresponding revenue center date.
- The presence of revenue code 0652 (CHC) on the hospice claim. Days billed as CHC require more than half the hours provided be nursing hours.
- The presence of revenue code 0656 (GIP) on the hospice claim. We assume that days billed as GIP will include nursing visits. We make that assumption instead of looking at the visits directly because Medicare does not require hospices to record all visits on the claim for the GIP level of care.

Based on the above information, if within a hospice stay, we find eight or more consecutive days where no nursing visits are provided, no CHC is provided, and no GIP is provided, then we identify the hospice stay as having a gap in nursing visits greater than 7 days. This indicator helps the HCI to capture patients' receipt of adequate oversight through nurse visits and direct patient care, which is an important aspect of hospice care. For each hospice, we divide the number of stays with at least one gap of eight or more days without a nursing visit (for stays of 30 or more days) by the number of stays of 30 or more days. We only consider the days within the period being examined.

The specifications for Indicator Two, Gaps in Nursing Visits, are as follows:

[28] See Special coverage requirements, Title 42, Chapter IV, Subchapter B, Part 418, § 418.204. *https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=42%3A3.0.1.1.5#se42.3.418_1204.*

[29] See Payment procedures for hospice care, Title 42, Chapter IV, Subchapter B, Part 418, § 418.302. *https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=42%3A3.0.1.1.5#se42.3.418_1302.*

[30] Office of Inspector General. (2013). *Medicare Hospice: Use of General Inpatient Care. https://oig.hhs.gov/oei/reports/oei-02-10-00490.pdf.*

[31] See § 418.56 (*https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=42%3A3.0.1.1.5#se42.3.418_156*) and § 418.76 (*https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=42%3A3.0.1.1.5#se42.3.418_176*).

[32] Office of Inspector General. (2019). *Hospice Deficiencies Pose Risks to Medicare Beneficiaries. https://oig.hhs.gov/oei/reports/oei-02-17-00020.pdf?utm_source=summary-page&utm_medium=web&utm_campaign=OEI-02-17-00020-PDF.*

[33] Hospices bill each day of CHC on a separate line item on the hospice claim.

• Numerator: The number of elections with the hospice where the patient experienced at least one gap between nursing visits exceeding 7 days, excluding hospice elections where the patient elected hospice for less than 30 days within a reporting period.

• Denominator: The total number of elections with the hospice, excluding hospice elections where the patient elected hospice for less than 30 days within a reporting period.

• Index Earned Point Criterion: Hospices earn a point towards the HCI if their individual hospice score for gaps in nursing visits greater than 7 days falls below the 90th percentile ranking among hospices nationally.

(3). Indicator Three: Early Live Discharges

Prior work has identified various concerning patterns of live discharge from hospice. High rates of live discharge suggest concerns in hospices' care processes, their advance care planning to prevent hospitalizations, or their discharge processes.[34] As MedPAC noted,[35] ''Hospice providers are expected to have some rate of live discharges because some patients change their mind about using the hospice benefit and dis-enroll from hospice or their condition improves and they no longer meet the hospice eligibility criteria. However, providers with substantially higher percent of live discharge than their peers could signal a potential concern with quality of care or program integrity. An unusually high rate of live discharges could indicate that a hospice provider is not meeting the needs of patients and families or is admitting patients who do not meet the eligibility criteria.''

Our live discharge indicators included in the HCI, like MedPAC's, comprise discharges for all reasons. They include instances where the patient was no longer found terminally ill and revocations due to the patient's choice. MedPAC explains their rationale for including all discharge as follows:[36]

''Some stakeholders argue that live discharges initiated by the beneficiary—such as when the beneficiary revokes his or her hospice enrollment—should not be included in a live-discharge measure because, some stakeholders assert, these discharges reflect beneficiary preferences and are not in the hospice's control. Because beneficiaries may choose to revoke hospice for a variety of reasons, which in some cases are related to the hospice provider's business practices or quality of care, we include revocations in our analysis.''

This indicator identifies whether a hospice is below the 90th percentile in terms of the percentage of live discharges that occur within 7 days of hospice admission during the fiscal year examined. Live discharges occur when the patient discharge status code on a hospice claim *does not* equal a code from the following list: ''30'', ''40'', ''41'', ''42'', ''50'', ''51''. We measure whether a live discharge occurs during the first 7 days of hospice by looking at a patient's lifetime length of stay in hospice.[37] For each hospice, we divide the number of live discharges in the first 7 days of hospice by the number of live discharges. Live discharges are assigned to a particular reporting period based on the date of the live discharge (which corresponds to the through date on the claim indicating the live discharge).

The specifications for Indicator Three, Early Live Discharges, are as follows:

• Numerator: The total number of live discharges from the hospice occurring within the first 7 days of hospice within a reporting period.

• Denominator: The total number of all live discharge from the hospice within a reporting period.

• Index Earned Point Criterion: Hospices earn a point towards the HCI if their individual percentage of live discharges on or before the seventh day of hospice falls below the 90th percentile ranking among hospices nationally.

(4). Indicator Four: Late Live Discharges

The rate of live discharge that occurred 180 days or more after hospice enrollment identifies another potentially concerning pattern of live discharge from hospice. Both indicator three and indicator four of the HCI recognize concerning patterns of live discharge impacting patient experience and quality of care. MedPAC, in descriptive analyses of hospices exceeding the Medicare annual payment cap, noted that ''if some hospices have rates of discharging patients alive that are substantially higher than most other hospices it raises concerns that some hospices may be pursuing business models that seek out patients likely to have long stays who may not meet the hospice eligibility criteria''.[38] Because of quality implications for hospices who pursue such business models, the live discharge after long hospice enrollments was included in the index.

This indicator identifies whether a hospice is below the 90th percentile in terms of the percentage of live discharges that occur on or after the 180th day of hospice. Live discharges occur when the patient discharge status code *does not* equal a value from the following list: ''30'', ''40'', ''41'', ''42'', ''50'', ''51''. We measure whether a live discharge occurs on or after the 180th day of hospice by looking at a patient's lifetime length of stay in hospice. For each hospice, we divide the number of live discharges that occur on or after the 180th day of hospice by the number of live discharges. Live discharges are assigned to a particular reporting period based on the date of the live discharge (which corresponds to the through date on the claim).

The specifications for Indicator Four, Late Live Discharges, are as follows:

• Numerator: The total number of live discharges from the hospice occurring on or after 180 days of enrollment in hospice within a reporting period.

• Denominator: The total number of all live discharge from the hospice within a reporting period.

• Index Earned Point Criterion: Hospices earn a point towards the HCI if their individual hospice score for live discharges on or after the 180th day of hospice falls below the 90th percentile ranking among hospices nationally.

(5). Indicator Five: Burdensome Transitions (Type 1)—Live Discharges From Hospice Followed by Hospitalization and Subsequent Hospice Readmission

The Type 1 burdensome transitions reflects hospice live discharge with a hospital admission within 2 days of hospice discharge, and then hospice readmission within 2 days of hospital discharge. This pattern of transitions may lead to fragmented care and may be associated with concerning care processes. For example, Type 1 burdensome transitions may arise from a deficiency in advance care planning to prevent hospitalizations or a discharge process that does not appropriately identify a hospice patient whose conditions are stabilized prior to discharge.[39]

[34] Teno J.M., Bowman, J., Plotzke, M., Gozalo, P.L., Christian, T., Miller, S.C., Williams, C., & Mor, V. (2015). Characteristics of hospice programs with problematic live discharges. Journal of Pain and Symptom Management, 50, 548–552. doi: 10.1016/j.jpainsymman.2015.05.001.

[35] MedPAC. (2020). *Chapter 12: Hospice Services. http://medpac.gov/docs/default-source/reports/mar20_medpac_ch12_sec.pdf.*

[36] MedPAC. (2020). *Chapter 12: Hospice Services. http://medpac.gov/docs/default-source/reports/mar20_medpac_ch12_sec.pdf.*

[37] That is, we are measuring the first seven days of hospice over a patient's lifetime and potentially across multiple hospice elections and fiscal years.

[38] MedPAC. (2020). *Chapter 12: Hospice Services. http://medpac.gov/docs/default-source/reports/mar20_medpac_ch12_sec.pdf.*

[39] For example, see: Teno J.M., Bowman, J., Plotzke, M., Gozalo, P.L., Christian, T., Miller, S.C.,

This indicator identifies whether a hospice is below the 90th percentile in terms of the percentage of live discharges that are followed by a hospitalization (within 2 days of hospice discharge) and then followed by a hospice readmission (within 2 days of hospitalization) during the FY examined. Live discharges occur when the patient discharge status code *does not* equal a value from the following list: ''30'', ''40'', ''41'', ''42'', ''50'', ''51''. Hospitalizations are found by looking at all fee-for-service Medicare inpatient claims. Overlapping inpatient claims were combined to determine the full length of a hospitalization (looking at the earliest from date and latest through date from a series of overlapping inpatient claims for a beneficiary). In order to be counted, the ''from'' date of the hospitalization had to occur no more than 2 days after the date of hospice live discharge.[40] From there, we found all beneficiaries that ended their hospitalization and were readmitted back to hospice no more than 2 days after the last date of the hospitalization. To calculate the percentage, for each hospice we divided the number of live discharges that are followed by a hospitalization (within 2 days of hospice discharge) and then followed by a hospice readmission (within 2 days of hospitalization) in a given reporting period by the number of live discharges in that same period.

The specifications for Indicator Five, Burdensome Transitions Type 1, are as follows:

- Numerator: The total number of live discharges from the hospice followed by hospital admission within 2 days, then hospice readmission within 2 days of hospital discharge within a reporting period.
- Denominator: The total number of all live discharge from the hospice within a reporting period.
- Index Earned Point Criterion: Hospices earn a point towards the HCI if their individual hospice score for Type 1 burdensome transitions falls below the 90th percentile ranking among hospices nationally.

(6). Indicator Six: Burdensome Transitions (Type 2)—Live Discharges From Hospice Followed by Hospitalization With the Patient Dying in the Hospital

Death in a hospital following live discharge in another concerning pattern in hospice use. Thus, we believe that indicators five and indicator six of the HCI are necessary to differentiate concerning behaviors affecting patient care. This indicator reflects hospice live discharge followed by hospitalization within 2 days with the patient dying in the hospital, referred to as Type 2 burdensome transitions. This pattern of transitions may be associated with a discharge process that does not appropriately assess the stability of a hospice patient's conditions prior to live discharge.[41]

This indicator identifies whether a hospice is below the 90th percentile in terms of the percentage of live discharges that are followed by a hospitalization (within two days of hospice discharge) and then the patient dies in the hospital. Live discharges occur when the patient discharge status code *does not* equal a value from the following list: ''30'', ''40'', ''41'', ''42'', ''50'', ''51''. Hospitalizations are found by looking at all inpatient claims. Overlapping inpatient claims were combined to determine a full length of a hospitalization (looking at the earliest from date and latest through date from a series of overlapping inpatient claims). To be counted, the ''from'' date of the hospitalization had to occur no more than 2 days after the date of hospice live discharge. From there, we identified all beneficiaries whose date of death is listed as occurring during the dates of the hospitalization. To calculate the percentage, for each hospice we divided the number of live discharges that are followed by a hospitalization (within 2 days of hospice discharge) and then the patient dies in the hospital in a given FY by the number of live discharges in that same reporting period.

The specifications for Indicator Six, Burdensome Transitions Type 2, are as follows:

- Numerator: The total number of live discharges from the hospice followed by a hospitalization within 2 days of live discharge with death in the hospital within a reporting year.
- Denominator: The total number of all live discharge from the hospice within a reporting year.
- Index Earned Point Criterion: Hospices earn a point towards the HCI if their individual hospice score for Type 2 burdensome transitions falls below the 90th percentile ranking among hospices nationally.

(7). Indicator Seven: Per-Beneficiary Medicare Spending

Estimates of per-beneficiary spending are endorsed by NQF (#2158)[42] and publicly reported by CMS for other care settings. Because the Medicare hospice benefit pays a per diem rate, an important determinant of per-beneficiary spending is the length of election. MedPAC reported that nearly half of Medicare hospice expenditures are for patients that have had at least 180 or more days on hospice, and expressed a concern that some programs do not appropriately discharge patients whose medical condition makes them no longer eligible for hospice services, or, that that hospices selectively enroll patients with non-cancer diagnoses and longer predicted lengths of stay in hospice.[43] The other determinant of per-beneficiary spending is the level of care at which services are billed. In a 2016 report, the OIG has expressed concern at the potentially inappropriate billing of GIP care.[44] For these reasons the HCI includes one indicator for per-beneficiary spending; lower rates of per beneficiary spending may identify hospices that provide efficient care at a lower cost to Medicare.

This indicator identifies whether a hospice is below the 90th percentile in terms of the average Medicare hospice payments per beneficiary. Hospice payments per beneficiary are determined by summing together all payments on hospice claims for a particular reporting year for a particular hospice. The number of beneficiaries a hospice serves in a particular year is determined by counting the number of unique beneficiaries on all hospice claims in the same period for a particular hospice. Medicare spending per beneficiary is then calculated by dividing the total payments by the total number of unique beneficiaries.

The specifications for Indicator Seven, Per-Beneficiary Medicare Spending, are as follows:

Williams, C., & Mor, V. (2015). Characteristics of hospice programs with problematic live discharges. Journal of Pain and Symptom Management, 50, 548–552. doi: 10.1016/j.jpainsymman.2015.05.001.

[40] For example, if the hospice discharge occurred on a Sunday, the hospitalization had to occur on Sunday, Monday, or Tuesday to be counted.

[41] For example, see: Teno J.M., Bowman, J., Plotzke, M., Gozalo, P.L., Christian, T., Miller, S.C., Williams, C., & Mor, V. (2015). Characteristics of hospice programs with problematic live discharges. Journal of Pain and Symptom Management, 50, 548–552. doi: 10.1016/j.jpainsymman.2015.05.001.

[42] National Quality Forum. (2013). *#2158 Payment-Standardized Medicare Spending Per Beneficiary (MSPB). https://www.qualityforum.org/Projects/c-d/Cost_and_Resource_Project/2158.aspx.*

[43] MedPAC. (2020). *Chapter 12: Hospice Services. http://medpac.gov/docs/default-source/reports/mar20_medpac_ch12_sec.pdf.*

[44] Office of Inspector General. (2016). *Hospices Inappropriately Billed Medicare Over $250 Million for General Inpatient Care. https://oig.hhs.gov/oei/reports/oei-02-10-00491.pdf.*

• Numerator: Total Medicare hospice payments received by a hospice within a reporting period.

• Denominator: Total number of beneficiaries electing hospice with the hospice within a reporting period.

• Index Earned Point Criterion: Hospices earn a point towards the HCI if their average Medicare spending per beneficiary falls below the 90th percentile ranking among hospices nationally.

(8). Indicator Eight: Nurse Care Minutes per Routine Home Care (RHC) Day

Medicare Hospice CoPs require a member of the interdisciplinary team to ensure ongoing assessment of patient and caregiver needs.[45] Such assessment is necessary to ensure the successful preparation, implementation, and refinements for the plan of care. Hospices must also ensure that patients and caregivers receive education and training as appropriate to their responsibilities for the care and services identified in the plan of care. To assess adequate oversight, the HCI includes this indicator assessing the average number of skilled nursing minutes per day during RHC days to differentiate hospices that are providing assessment throughout the hospice stay.

This indicator identifies whether a hospice is above the 10th percentile in terms of the average number of nursing minutes provided on RHC days during the reporting period examined. We identify RHC days by the presence of revenue code 0651 on the hospice claim. We identify the dates of RHC service by the corresponding revenue center date (which identifies the first day of RHC) and the revenue center units (which identifies the number of days of RHC (including the first day of RHC)). We identify nursing visits by the presence of revenue code 055x (Skilled Nursing) on the claim. We count skilled nursing visits where the corresponding revenue center date overlaps with one of the days of RHC previously identified. We then count the minutes of skilled nursing visits by taking the corresponding revenue center units (that is, one unit is 15 minutes) and multiplying by 15. For each hospice, we sum together all skilled nursing minutes provided on RHC days and divide by the sum of RHC days.

The specifications for Indicator Eight, Nurse Care Minutes per RHC Day, are as follows:

• Numerator: Total skilled nursing minutes provided by a hospice on all RHC service days within a reporting period.

• Denominator: The total number of RHC days provided by a hospice within a reporting period.

• Index Earned Point Criterion: Hospices earn a point towards the HCI if their individual hospice score for Nursing Minutes per RHC day falls above the 10th percentile ranking among hospices nationally.

(9). Indicator Nine: Skilled Nursing Minutes on Weekends

Our regulations at § 418.100(c)(2) require that ''[n]ursing services, physician services, and drugs and biologicals . . . be made routinely available on a 24-hour basis seven days a week''.[46] Ongoing assessment of patient and caregiver needs and plan of care implementation are necessary for adequate hospice care oversight. Fewer observed hospice services on weekends (relative to that provided on weekdays) is not itself an indication of a lack of access. In fact, on weekends, patients' caregivers are more likely to be around and could prefer privacy from hospice staff. However, patterns of variation across providers could signal less service provider availability and access for patients on weekends. Thus, the HCI includes this indicator to further differentiate whether care is available to patients on weekends. To assess hospice service availability, this indicator includes minutes of care provided by skilled nurses on weekend RHC days.

This indicator identifies whether a hospice is at or above the 10th percentile in terms of the percentage of skilled nursing minutes performed on weekends compared to all days during the reporting period examined. We identify RHC days by the presence of revenue code 0651 on the hospice claim. We identify the dates of RHC service by the corresponding revenue center date (which identifies the first day of RHC) and the revenue center units (which identifies the number of days of RHC (including the first day of RHC)). We identify nursing visits by the presence of revenue code 055x (Skilled Nursing) on the claim. We count skilled nursing visits where the corresponding revenue center date overlaps with one of the days of RHC previously identified. We then count the minutes of skilled nursing visits by taking the corresponding revenue center units and multiplying by 15. For each hospice, we sum together all skilled nursing minutes provided on RHC days that occur on a Saturday or Sunday and divide by the sum of all skilled nursing minutes provided on all RHC days.

The specifications for Indicator Nine, Skilled Nursing Minutes on Weekends, are as follows:

• Numerator: Total sum of minutes provided by the hospice during skilled nursing visits during RHC services days occurring on Saturdays or Sunday within a reporting period.

• Denominator: Total skilled nursing minutes provided by the hospice during RHC service days within a reporting period.

• Index Earned Point Criterion: Hospices earn a point towards the HCI if their individual hospice score for percentage of skilled nursing minutes provided during the weekend is above the 10th percentile ranking among hospices nationally.

(10). Indicator Ten: Visits Near Death

The end of life is typically the period in the terminal illness trajectory with the highest symptom burden. Particularly during the last few days before death, patients (and caregivers) experience many physical and emotional symptoms, necessitating close care and attention from the integrated hospice team and drawing increasingly on hospice team resources.[47] [48] [49] Physical symptoms of actively dying can often be identified within three days of death in some patients.[50]

This indicator identifies whether a hospice is at or above the 10th percentile in terms of the percentage of beneficiaries with a nurse and/or medical social services visit in the last 3 days of life. For this indicator, we first

[45] See Condition of participation: Interdisciplinary group, care planning, and coordination of services, Title 42, Chapter IV, Subchapter B, Part 418, § 418.56 (*https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=42%3A3.0.1.1.5#se42.3.418_156*) and Condition of participation: Hospice aide and homemaker services, Title 42, Chapter IV, Subchapter B, Part 418, § 418.76 (*https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=42%3A3.0.1.1.5#se42.3.418_176*).

[46] See § 418.100 (*https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=42%3A3.0.1.1.5#se42.3.418_1100*).

[47] de la Cruz, M., et al. (2015). Delirium, agitation, and symptom distress within the final seven days of life among cancer patients receiving hospice care. Palliative & Supportive Care, 13(2): 211–216. doi: 10.1017/S1478951513001144.

[48] Dellon, E.P., et al. (2010). Family caregiver perspectives on symptoms and treatments for patients dying from complications of cystic fibrosis. Journal of Pain & Symptom Management, 40(6): 829–837. doi: 10.1016/j.jpainsymman.2010.03.024.

[49] Kehl, K.A., et al. (2013). A systematic review of the prevalence of signs of impending death and symptoms in the last 2 weeks of life. American Journal of Hospice & Palliative Care, 30(6): 601–616. doi: 10.1177/1049909112468222.

[50] Hui D et al. (2014). Clinical Signs of Impending Death in Cancer Patients. The Oncologist. 19(6):681–687. doi:10.1634/theoncologist.2013–0457.

determine if a beneficiary was in hospice for at least 1 day during their last 3 days of life by comparing days of hospice enrollment from hospice claims to their date of death. We identify nursing visits and medical social service visits by the presence of revenue code 055x (Skilled Nursing) and 056x (Medical Social Services) on the claim. We identify the dates of those visits by the revenue center date for those revenue codes.

Additionally, we assume that days billed as GIP (revenue code 0656) will include nursing visits. We make that assumption instead of looking at the visits directly because Medicare does not require hospices to record all visits on the claim for the GIP level of care. For each hospice, we divide the number of beneficiaries with a nursing or medical social service visits on a hospice claim during the last 3 days of life by the number of beneficiaries with at least 1 day of hospice during the last 3 days of life.

The specifications for Indicator Ten, Visits Near Death, are as follows:

- Numerator: The number of decedent beneficiaries receiving a visit by a skilled nurse or social worker staff for the hospice in the last 3 days of the beneficiary's life within a reporting period.
- Denominator: The number of decedent beneficiaries served by the hospice within a reporting period.
- Index Earned Point Criterion: Hospices earn a point towards the HCI if their individual hospice score for percentage of decedents receiving a visit by a skilled nurse or social worked in the last 3 days of life falls above the 10th percentile ranking among hospices nationally.

(11). Hospice Care Index Scoring Example

As discussed during the NQF's January 2021 MAP meeting, the HCI summarizes information from ten indicators with each indicator representing key components of the hospice care recognizing care delivery and processes. Hospices receive a single HCI score, which reflects the information from all ten indicators. Specifically, a hospice's HCI score is based on its collective performance on the ten performance indicators detailed above, all of which must be included to calculate the score and meaningfully distinguish between hospices' relative performance. The HCI's component indicators are assigned a criterion determined by statistical analysis of an individual hospice's indicator score relative to national hospice performance. Table 18 illustrates how a hypothetical hospice's score is determined across all ten indicators, and how the ten indicators' scores determine the overall HCI score.

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TABLE 18: Hospice Care Index Indicator Scoring Example

Name (Hospice Score Units)	Numerator	Denominator	Hospice Observed Score	National Average Score	Percentile Rank Among Hospices Nationally	Index Earned Point Criteria	Points Earned?	Points Awarded
Provided CHC/GIP (% days)	48	3,904	1.2%	0.9%	83	Hospice Score Above 0%	Yes	+1
Gaps in nursing visits (% elections)	12	104	11.5%	5.9%	92	Below 90 Percentile Rank	No	0
Early live discharges (% live discharges)	3	27	11.1%	7.7%	75	Below 90 Percentile Rank	Yes	+1
Late live discharges (% live discharges)	14	27	51.9%	37.3%	84	Below 90 Percentile Rank	Yes	+1
Burdensome transitions, Type 1 (% live discharges)	4	27	14.8%	8.7%	77	Below 90 Percentile Rank	Yes	+1
Burdensome transitions, Type 2 (% live discharges)	0	27	0.0%	2.7%	1	Below 90 Percentile Rank	Yes	+1
Per-beneficiary Medicare spending (U.S. dollars $)	$2,322,657	256	$9,073	$12,959	22	Below 90 Percentile Rank	Yes	+1
Nurse care minutes per routine home care day (minutes)	44,100	6,985	6.3	16.0	2	Above 10 Percentile Rank	No	0
Skilled nursing minutes on weekends (% minutes)	9,090	157,230	5.8%	9.4%	17	Above 10 Percentile Rank	Yes	+1
Visits near death (% decedents)	147	151	97.4%	94.5%	46	Above 10 Percentile Rank	Yes	+1
						Hospice Care Index Total Score =		**8**

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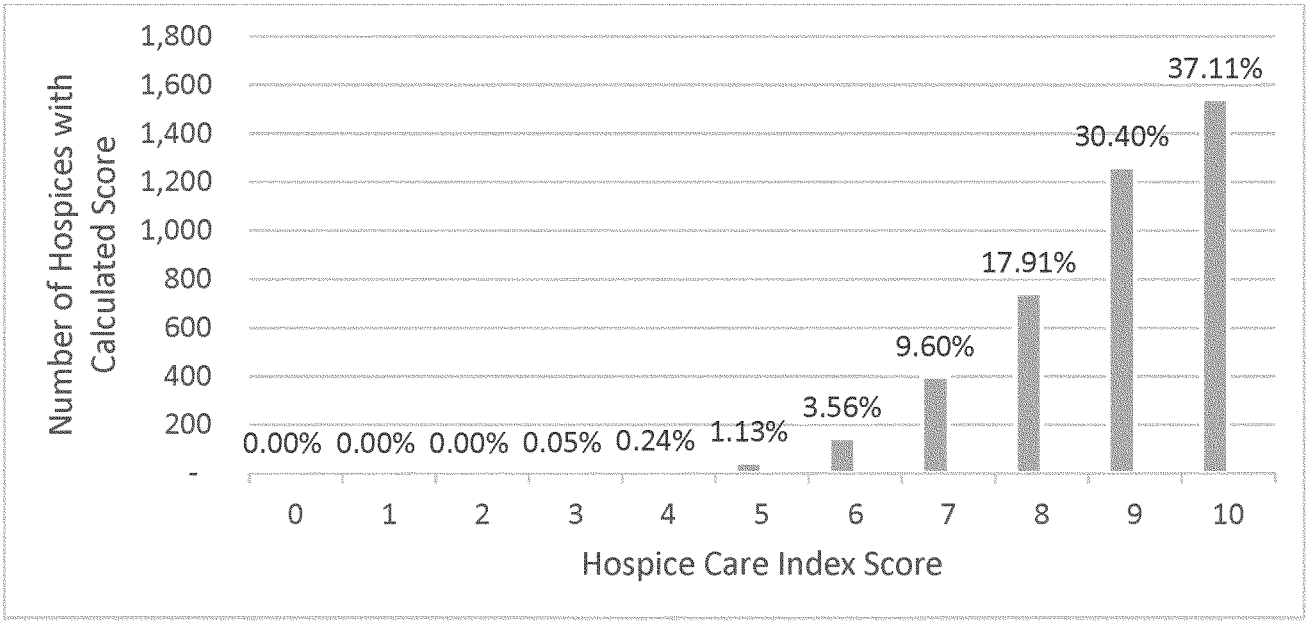
c. Measure Reportability, Variability, and Validity

As part of developing the HCI, we conducted reportability, variability, and validity testing using claims data from FY 2019. Reportability analyses found a high proportion of hospices (over 85 percent) that would yield reportable measure scores over 1 year (for more on reportability analysis, see section (2) Update on Use of Q4 2019 Data and Data Freeze for Refreshes in 2021.). Variability analyses confirmed that HCI demonstrates sufficient ability to differentiate hospices. Hospices' scores on the HCI can range from zero to ten. During measure testing, we observed that hospices achieved scores between three and ten. In testing, 37.1 percent of hospices scored ten out of ten, 30.4 percent scored nine out of ten, 17.9 percent scored eight out of ten, 9.6 percent scored seven out of ten, and 5.0 percent scored six or lower, as shown in Figure 6.

Figure 6: Distribution of Hospice Care Index Scores, Federal Fiscal Year 2019



Source: 100% Medicare hospice claims, Federal Fiscal Year 2019.

Validity analyses showed that hospices' HCI scores align with family caregivers' perceptions of hospice quality, as measured by CAHPS Hospice survey responses (NQF endorsed quality measure #2651). Hospices with higher HCI scores generally achieve better caregiver ratings as measured by CAHPS Hospice scores, and hospices with lower HCI scores generally achieve poorer CAHPS Hospice scores. As measured by Pearson's correlation coefficients, the correlation between the CAHPS hospice overall rating and the HCI is +0.0675, and the correlation between the CAHPS hospice recommendation outcome and the HCI score is +0.0916. As such, HCI scores are consistent with CAHPS Hospice caregiver ratings, supporting the index as a valid measurement of hospice care.

We also conducted a stability analysis by comparing index scores calculated for the same hospice using claims from Federal FY 2017 and 2019. The analysis found that 82.8 percent of providers' scores changed by, at most, one point over the 2 years. These results serve as evidence of the measure's reliability by indicating that a hospice's HCI scores would not normally fluctuate a great deal from one year to the next.

d. Stakeholder Support

A TEP convened by our measure development contractor, in April 2020, provided input on this measure concept. Additionally, during the summer of 2020, CMS convened five listening sessions with national hospice provider organizations to discuss the HCI concept with the goals of engaging stakeholders and receiving feedback early in the measure's development. In October 2020, our contractor, Abt Associates, convened a workgroup of family caregivers whose family members have received hospice care to provide input on this measure concept from the family and caregiver perspective. Finally, the NQF Measures Application Partnership (MAP) met on January 11, 2021 and provided input to CMS. The MAP conditionally supports the HCI for rulemaking contingent on NQF endorsement. The ''2020–2021 MAP 2020 Final Recommendations'' can be found at: *http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=94893.*

Stakeholders were generally supportive of a quality measure based on multiple indicators using claims data for public reporting. Several hospice providers expressed support for the measure's ability to demonstrate greater variation in hospice performance than the component indicators taken individually. Hospice caregivers also welcomed the addition of new quality measures to HQRP to better differentiate between hospices. In particular, family caregivers stated that there might be a need for several HCI indicators, such as nursing availability on weekends and average Medicare per-beneficiary spending, to be included on Care Compare as additional information.

Some stakeholders raised concerns that claims data may not adequately express the quality of care provided, and may be better suited as an indicator for program integrity or compliance issues. Hospice providers suggested that claims may lack sufficient information to adequately reflect individual patient needs or the full array of hospice

practices. In particular, claims do not fully capture patients' clinical conditions, patient and caregiver preferences, or hospice activities such as telehealth, chaplain visits, and specialized services such as massage or music therapy. After much consideration of the input received, we believe the benefits of proposing adoption of the HCI outweigh its limitations. The HCI would not be intended to account for all potentially valuable aspects of hospice care, nor would it be expected to entirely close the information gaps presently found in the HQRP. Rather, the HCI would serve as a useful measure to add value to the HQRP by providing more information to patients and family caregivers and better empowering them to make informed health care decisions. We view the HCI as an opportunity to add value to the HQRP, augmenting the current measure set with an index of indicators compiled from currently available claims data. This will provide new and useful information to patients and family caregivers without further burden to them, or to providers.

Stakeholders also suggested several valuable exploratory analyses, improvements for the indicators presented, and ideas for eventual public display for CMS to consider. We further refined the HCI based on this feedback, focusing on those indicators with the strongest consistency with CAHPS Hospice scores and/or which quality experts have identified as salient issues for measurement and observation. We also revised and refined how the HCI will be publicly displayed on Care Compare in response to family caregiver input.

e. Form, Manner and Timing of Data Collection and Submission

The data source for this HCI measure will be Medicare claims data that are already collected and submitted to CMS. We propose to begin reporting this measure using existing data items no earlier than May 2022. For more details, see section (3). Proposal to Publicly Report the Hospice Care Index and Hospice Visits in the Last Days of Life Claims-based Measures.

In addition, to help hospices understand the HCI and their hospice's performance, we will revise the confidential QM report to include claims-based measure scores, including agency and national rates through the Certification and Survey Provider Enhanced Reports (CASPER) or replacement system. The QM report will also include results of the individual indicators used to calculate the single HCI score, and provide details on the indicators and HCI overall score to support hospices in interpreting the information. The HCI indicators will be available by visiting the Provider Data Catalog at *https://data.cms.gov/provider-data/topics/hospice-care.*

We are soliciting public comment on the proposal to add the composite HCI measure to the HQRP starting in FY 2022. We are also soliciting comments on the proposal to add the HCI to the program for public reporting beginning no earlier than May 2022.

4. Update on the Hospice Visits in the Last Days of Life (HVLDL) and Hospice Item Set V3.00

On August 13, 2020, we sought public comment in an information collection request to remove Section O ''Service Utilization'' (hereafter referred to as Section O) of the HIS discharge assessment. Removal of Section O is the sole change from HIS V2.01 and in effect eliminate the HVWDII quality measure pair. In Paperwork Reduction Act package (PRA), CMS–10390 (OMB control number: 0938–1153), we also proposed to replace the HVWDII measure pair with the HVLDL. This means that we will no longer report HVWDII with patient discharges and will start publicly reporting HVLDL no earlier than May 2022. The Office of Management and Budget (OMB) approved the collection of information to remove Section O of the HIS expiring on February 29, 2024, (OMB Control Number: 0938–1153, CMS–10390). We direct the public to review the PRA at *https://www.cms.gov/regulations-and-guidancelegislation paperworkreductionactof1995pra-listing/cms-10390* and HVWDII report at *https://www.cms.gov/files/document/hqrphospice-visits-when-death-imminent-testing-re-specification-reportoctober-2020.pdf.* As a claims-based measure, the HVLDL measure would not impose any new collection of information requirements.

The HVLDL measure, as a replacement, will continue to fill an important area in hospice care previously filled by the HVWDII measure pair. We discussed the analysis with a TEP convened by our measure development contractor in November 2019 and with the MAP, hosted by the NQF in December 2019 [51] for inclusion in the HQRP. During these meetings, the discussions reflecting on the analysis generally supported the replacement of HVWDII with a claims-based HVLDL measure. The November 2019 TEP report can be found in the downloads section at Hospice QRP Provider Engagement Opportunities and final recommendations and presentation of the HVLDL measure before NQF's MAP can be found at Quality Forum—Post-Acute Care, *https://www.qualityforum.org/Publications/2020/02/MAP_2020_Considerations_for_Implementing_Measures_Final_Report_-_PAC_LTC.aspx.*

OMB approved the proposal to replace the HVWDII measure with the HVLDL measure and remove Section O from the discharge assessment on February 16, 2021. The HIS V3.00 became effective on February 16, 2021 and expires on February 29, 2024; OMB control number 0938–1153.

5. Proposal To Revise § 418.312(b) Submission of Hospice Quality Reporting Program Data

To address the inclusion of administrative data, such as Medicare claims used for hospice claims-based measures like the HVLDL and HCI in the HQRP and correct technical errors identified in the FY 2016 and 2019 Hospice Wage Index and Payment Rate Update final rules, we propose to revise the regulation at § 418.312(b) by adding paragraphs (b)(1) through (3). As proposed, paragraph (b)(1) would now include the existing language on the standardized set of admission and discharge items. Paragraph (b)(2) would require collection of Administrative Data, such as Medicare claims data, used for hospice quality measures to capture services throughout the hospice stay. And these data automatically meet the HQRP requirements for § 418.306(b)(2).

Paragraph (b)(3) would be a technical correction to address errors identified in the FY 2016 and FY 2019 Hospice Wage Index and Payment Rate Update final rules, (80 FR 47186 and 83 FR 38636). In the FY 2016 Hospice final rule (80 FR 47186) adopted seven factors for measure removal, and in the FY 2019 Hospice final rule (83 FR 38636) adopted the eighth factor for measure removal. In those final rules, we referenced the measure removal factors in the preamble but inadvertently omitted them from the regulations text. Thus, these measure removal factors identify how measures are removed from the HQRP. Section 418.312(b)(3) would include the eight measure removal factors as follows:

CMS may remove a quality measure from the Hospice QRP based on one or more of the following factors:

[51] National Quality Forum. (2020). *MAP 2020 Considerations for Implementing Measures Final Report—PAC LTC. http://www.qualityforum.org/Publications/2020/02/MAP_2020_Considerations_for_Implementing_Measures_Final_Report_-_PAC_LTC.aspx.*

(1) Measure performance among hospices is so high and unvarying that meaningful distinctions in improvements in performance can no longer be made.

(2) Performance or improvement on a measure does not result in better patient outcomes.

(3) A measure does not align with current clinical guidelines or practice.

(4) The availability of a more broadly applicable (across settings, populations, or conditions) measure for the particular topic.

(5) The availability of a measure that is more proximal in time to desired patient outcomes for the particular topic.

(6) The availability of a measure that is more strongly associated with desired patient outcomes for the particular topic.

(7) Collection or public reporting of a measure leads to negative unintended consequences other than patient harm.

(8) The costs associated with a measure outweigh the benefit of its continued use in the program.

We solicit public comment on our proposal to revise the regulation at § 418.312(b) to add paragraphs (b)(1) through (3) to include administrative data as part of the HQRP, and correct technical errors identified in the FY 2016 and 2019 Hospice Wage Index and Payment Rate Update final rules.

6. Update Regarding the Hospice Outcomes & Patient Evaluation (HOPE) Development

As finalized in the FY 2020 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements final rule (84 FR 38484), we are developing a hospice patient assessment instrument identified as the HOPE. This tool is intended to help hospices better understand care needs throughout the patient's dying process and contribute to the patient's plan of care. It will assess patients in real-time, based on interactions with the patient. The HOPE will support quality improvement activities and calculate outcome and other types of quality measures in a way that mitigates burden on hospice providers and patients. Our two primary objectives for the HOPE are to provide quality data for the HQRP requirements through standardized data collection, and to provide additional clinical data that could inform future payment refinements.

We anticipate that the HOPE will replace the HIS. The HIS is not a patient assessment instrument. HIS data collection ''consists of selecting responses to HIS items in conjunction with patient assessment activities or via abstraction from the patient's clinical record.'' (HIS Manual v.2.01). In contrast, the HOPE is a patient assessment instrument, designed to capture patient and family care needs in real-time during patient interactions throughout the patient's hospice stay, with the flexibility to accommodate patients with varying clinical needs. The HOPE will enable CMS and hospices to understand the care needs of people through the dying process, supporting provider care planning and quality improvement efforts, and ensuring the safety and comfort of individuals enrolled in hospice nationwide. The HOPE will include key items from the HIS along with Standardized Patient Assessment Data Elements (SPADEs), and demographics like gender and race. This approach to include key aspects of SPADES and demographics supports hospice feedback provided in the FYs 2017 and 2018 Hospice Wage Index and Payment Rate Update final rule (81 FR 52171 and 82 FR 36669) and CMS' goals for a hospice assessment instrument, as stated in the FY 2018 Hospice Wage Index and Payment Rate Update final rule. The HOPE assessment instrument would facilitate communication among providers and to measure the care of patient populations across settings. While the standardization of measures required for adoption under the IMPACT Act of 2014 is not applicable to hospices, it makes reasonable sense to include those standardized elements and items that appropriately and feasibly apply to hospice. After all, some patients may move through the healthcare system to hospice so capturing and tracking key SPADES and social risk factor items that apply to hospice, including some of the categories of SPADES identified in the IMPACT Act of 2014, may help CMS achieve our goals for continuity of care, overall patient care and well-being, interoperability, and health equity that are also discussed in this rule.

The draft HOPE has undergone cognitive and pilot testing, and will undergo field testing to establish reliability, validity and feasibility of the assessment instrument. We anticipate proposing the HOPE in future rulemaking after testing is complete.

We will continue development of the HOPE assessment in accordance with the Blueprint for the CMS Measures Management System. Development of the HOPE is grounded in extensive information gathering activities to identify and refine hospice assessment domains and candidate assessment items. We appreciate the industry's and national associations' engagement in providing input through information sharing activities, including expert interviews, key stakeholder interviews, and focus groups to support the HOPE development. As CMS proceeds with field testing the HOPE, we will continue to engage with stakeholders through sub-regulatory channels. In particular, we will continue to host HQRP Forums to allow hospices and other interested parties to engage with us on the latest updates and ask questions on the development of the HOPE and related quality measures. We also have a dedicated email account, *HospiceAssessment@cms.hhs.gov,* for comments about the HOPE. We will use field test results to create a final version of the HOPE to propose in future rulemaking for national implementation. We will continue to engage all stakeholders throughout this process. We appreciate the support for the HOPE and reiterate our commitment to providing updates and engaging stakeholders through sub-regulatory means. Future updates and engagement opportunities regarding HOPE can be found at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/HOPE.html.*

7. Update on Quality Measure Development for Future Years

In the FY 2017 Hospice Wage Index and Payment Rate Update final rule (81 FR 52160), we finalized new policies and requirements related to the HQRP, including how we would provide updates related to the development of new quality measures. Information on the current HQRP quality measures can be found at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Current-Measures.* In this proposed rule, we are continuing to provide updates for both HOPE-based and claims-based quality measure development.

To support new measure development, our contractor, Abt Associates, convened TEP meetings in 2020 to provide feedback on several measure concepts. In 2020, the TEP explored potential quality measure constructs that could be derived from the HOPE and their specifications. Specifically, for HOPE-based measure development, the TEP focused on pain and other symptom outcome measure concepts that could be calculated from the HOPE. Input from initial TEP workgroups held in spring 2020 informed follow-up information-gathering activities related to pain in general and neuropathic pain in particular. The 2020 Information

Gathering Summary report is available at *https://www.cms.gov/files/document/12042020-information-gathering-oy1508.pdf.* During fall 2020, the TEP reviewed measure concepts focusing on pain and symptom outcomes that could be calculated from HOPE items.

The TEP supported further exploration and development of these measures. As described in the 2020 TEP Summary Report, the TEP generally supports the following measure concepts that are calculated using HOPE items: Timely Reduction of Pain Impact, Reduction in Pain Severity, and Timely Reduction of Symptoms. The candidate measure Timely Reduction of Pain Impact reports the percentage of patients who experienced a reduction in the impact of moderate or severe pain. HOPE items assessing Symptom Impact, and Patient Desired Tolerance Level for Symptoms or Patient Preferences for Symptom Management were used to calculate this measure. The candidate measure Reduction in Pain Severity reports the percentage of patients who had a reduction in reported pain severity. The primary HOPE items used to calculate this measure include Pain Screening, Pain Active Problem, and Patient Desired Tolerance Level for Symptoms or Patient Preferences for Symptom Management. The last candidate measure discussed by the TEP was Timely Reduction of Symptoms which measures the percentage of patients who experience a reduction in the impact of symptoms other than pain. The HOPE items assessing Symptom Impact, and Patient Desired Tolerance Level for Symptoms or Patient Preferences for Symptom Management were used to calculate this measure. The HOPE items for all three measure are collected at multiple time points across a patient's stay, including at Admission, Symptom Reassessment, Level of Care Change, and Recertification. Overall, the TEP supported each candidate measure and agreed that they were viable for distinguishing hospice quality. We continue to develop all three candidate quality measures.

We are interested in exploring patient preferences for symptom management, addressing patient spiritual and psychosocial needs, and medication management in outcomes of care in development of quality measures. We seek public comment, methods, instruments, or brief summaries on hospice quality initiatives related to goal attainment, patient preferences, spiritual needs, psychosocial needs, and medication management.

Information about the TEP feedback on these quality measures concepts and future measure concepts can be obtained via: *https://www.cms.gov/files/document/2020-hqrp-tep-summary-report.pdf.* Related to the outcome measures and in order to have HOPE pain and symptom measures in the program as soon as possible, we plan to develop process measures, including on pain and symptom management. These process measures may support or complement the outcome measures. We solicit comments on current HOPE-based quality measure development and recommendations for future process and outcome measure constructs.

In the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38484) and as discussed below, we are interested in claims-based quality measures in order to leverage the multiple data sources currently available to support quality measure development. Specifically, we intend to develop additional claims-based measures that may enable beneficiaries and their family caregivers to make more informed choices about hospice care and to hold hospices more accountable for the care they provide. As discussed in this section, the HVLDL and HCI claims-based measures support the Meaningful Measures initiative and address gaps in HQRP. Additional claim-based measure concepts we are considering for development include hospice services on weekends, transitions after hospice live discharge, Medicare expenditures per beneficiary (including the share of non-hospice spending during hospice election, and the share for hospice care prior to the last year of life), and post-mortem visits as measures of hospice quality. We intend to submit additional claims-based measures for future consideration and solicit public comment.

We solicit public comment on the aforementioned HOPE- and claims-based quality measures to distinguish between high- and low-quality hospices, support healthcare providers in quality improvement efforts, and provide support to hospice consumers in helping to select a hospice provider. We solicit public comment on how the candidate measures may achieve those goals.

We are also considering developing hybrid quality measures that would be calculated using claims, assessment (HOPE), or other data sources. Hybrid quality measures allow for a more comprehensive set of information about care processes and outcomes than can be calculated using claims data alone. Assessment data can be used to support risk-adjustment. We seek public comment on quality measure concepts and considerations for developing hybrid measures based on a combination of data sources.

8. CAHPS Hospice Survey Participation Requirements for the FY 2023 APU and Subsequent Years

a. Background and Description of the CAHPS Hospice Survey

The CAHPS Hospice Survey is a component of the CMS HQRP which is used to collect data on the experiences of hospice patients and the primary caregivers listed in their hospice records. Readers who want more information about the development of the survey, originally called the Hospice Experience of Care Survey, may refer to 79 FR 50452 and 78 FR 48261. National implementation of the CAHPS Hospice Survey commenced January 1, 2015 as stated in the FY 2015 Hospice Wage Index and Payment Rate Update final rule (79 FR 50452).

b. Overview of the ''CAHPS Hospice Survey Measures''

The CAHPS Hospice Survey measures was re-endorsed by NQF on November 20, 2020. The re-endorsement can be found on the NQF website at: *https://www.qualityforum.org/Measures_Reports_Tools.aspx.* Use the QPS tool and search for NQF number 2651. The survey received its initial NQF endorsement on October 26, 2016 (NQF #2651). We adopted 8 survey based measures for the CY 2018 data collection period and for subsequent years. These eight measures are publicly reported on a designated CMS website, Care Compare, *https://www.medicare.gov/care-compare/.*

c. Data Sources

We previously finalized the participation requirements for the CAHPS Hospice Survey, (84 FR 38484). We propose no changes to these requirements going forward.

d. Public Reporting of CAHPS Hospice Survey Results

We began public reporting of the results of the CAHPS Hospice Survey on Hospice Compare as of February 2018. Prior to the COVID–19 public health emergency (PHE), we reported the most recent 8 quarters of data on the basis of a rolling average, with the most recent quarter of data being added and the oldest quarter of data removed from the averages for each data refresh. Given the exemptions provided due to COVID–19 PHE in the March 27, 2020 Guidance Memorandum,[52] public reporting will

[52] *https://www.cms.gov/files/document/guidance-memo-exceptions-and-extensions-quality-reporting-and-value-based-purchasing-programs.pdf.*

continue to be the most recent 8 quarters of data, excluding the exempted quarters; Quarter 1 and Quarter 2 of CY 2020. More information about this is detailed in the section entitled: Proposal for Public Reporting CAHPS-based measures with Fewer than Standard Numbers of Quarters Due to PHE Exemptions.

e. Volume-Based Exemption for CAHPS Hospice Survey Data Collection and Reporting Requirements

We previously finalized a volume-based exemption for CAHPS Hospice Survey Data Collection and Reporting requirements for FY 2021 and every year thereafter (84 FR 38526).

We propose no changes to this exemption. The exemption request form is available on the official CAHPS Hospice Survey website: *http://www.hospiceCAHPSsurvey.org.* Hospices that intend to claim the size exemption are required to submit to CMS their completed exemption request form by December 31, of the data collection year.

Hospices that served a total of fewer than 50 survey-eligible decedent/caregiver pairs in the year prior to the data collection year are eligible to apply for the size exemption. Hospices may apply for a size exemption by submitting the size exemption request form as outlined above. The size exemption is only valid for the year on the size exemption request form. If the hospice remains eligible for the size exemption, the hospice must complete the size exemption request form for every applicable FY APU period, as shown in table 19.

TABLE 19: Size Exemption Key Dates FY 2022 Through FY 2026

Fiscal year	Data collection year	Reference year	Size exemption form submission deadline
FY 2022	CY 2020	CY 2019	December 31, 2020
FY 2023	CY 2021	CY 2020	December 31, 2021
FY 2024	CY 2022	CY 2021	December 31, 2022
FY 2025	CY 2023	CY 2022	December 31, 2023
FY 2026	CY 2024	CY 2023	December 31, 2024

f. Newness Exemption for CAHPS Hospice Survey Data Collection and Public Reporting Requirements

We previously finalized a one-time newness exemption for hospices that meet the criteria as stated in the FY 2017 Hospice Wage Index and Payment Rate Update final rule (81 FR 52181). In the FY 2019 Hospice Wage Index and Payment Rate Update final rule (83 FR 38642), we continued the newness exemption for FY 2023, and all subsequent years. We encourage hospices to keep the letter they receive providing them with their CMS Certification Number (CCN). The letter can be used to show when you received your number.

g. Survey Participation Requirements

We previously finalized survey participation requirements for FY 2022 through FY 2025 as stated in the FY 2018 and FY 2019 Hospice Wage Index and Payment Rate Update final rules (82 FR 36670 and 83 FR 38642 through 38643). We also continued those requirements in all subsequent years (84 FR 38526). Table 20 restates the data submission dates for FY 2023 through FY 2025.

TABLE 20: CAHPS Hospice Survey Data Submission Dates for the APU in FY 2023, FY 2024, and FY 2025

Sample months (month of death)*	CAHPS Quarterly Data Submission Deadlines**
FY 2023 APU	
CY January-March 2021 (Quarter 1)	August 11, 2021
CY April-June 2021 (Quarter 2)	November 10, 2021
CY July-September 2021 (Quarter 3)	February 9, 2022
CY October-December 2021 (Quarter 4)	May 11, 2022
FY 2024 APU	
CY January-March 2022 (Quarter 1)	August 10, 2022
CY April-June 2022 (Quarter 2)	November 9, 2022
CY July-September 2022 (Quarter 3)	February 8, 2023
CY October-December 2022 (Quarter 4)	May 10, 2023
FY 2025 APU	
CY January-March 2023 (Quarter 1)	August 9, 2023
CY April-June 2023 (Quarter 2)	November 8, 2023
CY July-September 2023 (Quarter 3)	February 14, 2024
CY October-December 2023 (Quarter 4)	May 8, 2024

* Data collection for each sample month initiates 2 months following the month of patient death (for example, in April for deaths occurring in January).

** Data submission deadlines are the second Wednesday of the submission months, which are the months August, November, February, and May.

For further information about the CAHPS Hospice Survey, we encourage hospices and other entities to visit: *https://www.hospiceCAHPSsurvey.org.* For direct questions, contact the CAHPS Hospice Survey Team at *hospiceCAHPSsurvey@HCQIS.org* or call 1-(844) 472–4621.

h. Proposal To Add CAHPS Hospice Survey Star Ratings to Public Reporting

CMS currently publishes CAHPS star ratings for several of its public reporting programs including Home Health CAHPS and Hospital CAHPS. The intention in doing so is to provide a simple, easy to understand, method for summarizing CAHPS scores. Star ratings benefit the public in that they can be easier for some to understand than absolute measure scores, and they make comparisons between hospices more straightforward. The public's familiarity with a 1 through 5 star rating system, given its use by other programs, is also a benefit to using this system.

We propose to introduce Star Ratings for public reporting of CAHPS Hospice Survey results on the Care Compare or successor websites no sooner than FY 2022. We propose that the calculation and display of the CAHPS Hospice Survey Star Ratings be similar to that of other CAHPS Star Ratings programs such as Hospital CAHPS and Home Health CAHPS. The stars would range from one star (worst) to five stars (best). We propose that the stars be calculated based on ''top-box'' scores for each of the eight CAHPS Hospice Survey measures. Specifically, individual-level responses to survey items would be scored such that the most favorable response is scored as 100 and all other responses are scored as 0. A hospice-level score for a given survey item would then be calculated as the average of the individual-level responses, with adjustment for differences in case mix and mode of survey administration. For a measure composed of multiple items, the hospice-level measure score is the average of the hospice-level scores for each item within the measure. Similar to other CAHPS programs, we propose that the cut-points used to determine the stars be constructed using statistical clustering procedures that minimize the score differences within a star category and maximize the differences across star categories.

We propose to use a two-stage approach to calculate these cut-points. In the first stage, we would determine initial cut-points by calculating the clustering algorithm among hospices with 30 or more completed surveys over 2 quarters (that is, 6 months); restricting these calculations to hospices that meet a minimum sample size promotes stability of cut-points. Depending on whether hospices that meet this minimum sample size have different score patterns than smaller hospices, the initial cut-points may be too high or too low. To ensure that cut-points reflect the full distribution of measure performance, in the second stage, we would compare mean measure scores for the bigger hospices used in the first stage to all other hospices, and update cut-points by adjusting the initial cut-points to reflect the normalized difference between bigger and smaller hospices. This two-stage approach allows for calculation of stable cut-points that reflect the full range of hospice performance. We propose that hospice star ratings for each measure be assigned based on where the hospice-level measure score falls within these cut-points.

We further propose to calculate a summary or overall CAHPS Hospice Survey Star Rating by averaging the Star Ratings across the 8 measures, with a weight of ½ for Rating of the Hospice, a weight of ½ for Willingness to Recommend the Hospice, and a weight of 1 for each of the other measures, and then rounding to a whole number. We propose that only the overall Star Rating be publicly reported and that hospices must have a minimum of 75 completed surveys in order to be assigned a Star Rating. We propose to publish the details of the Star Ratings methodology on the CAHPS Hospice Survey website, *www.hospicecahpssurvey.org.* CMS requires no additional resources to create and display CAHPS star ratings.

We solicit comments on these proposals for CAHPS Star Ratings and included in public reporting no sooner than FY 2022.

9. Form, Manner, and Timing of Quality Data Submission

a. Background

Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. Such data must be submitted in a form and manner, and at a time specified by the Secretary. Section 1814(i)(5)(A)(i) of the Act was amended by the CAA 2021 and the payment reduction for failing to meet hospice quality reporting requirements is increased from 2 percent to 4 percent beginning with FY 2024. The Act requires that, beginning with FY 2014 through FY 2023, the Secretary shall reduce the market basket update by 2 percentage points and then beginning in FY 2024 and for each subsequent year, the Secretary shall reduce the market basket update by 4 percentage points for any hospice that does not comply with the quality data submission requirements for that FY.

b. Compliance

HQRP Compliance requires understanding three timeframes for both HIS and CAHPS. (1) The relevant Reporting Year, payment FY and the Reference Year. The ''Reporting Year'' (HIS)/''Data Collection Year'' (CAHPS). This timeframe is based on the CY. It is the same CY for both HIS and CAHPS. If the CAHPS Data Collection year is CY 2022, then the HIS reporting year is also CY 2022. (2) The APU is subsequently applied to FY payments based on compliance in the corresponding Reporting Year/Data Collection Year. (3) For the CAHPS Hospice Survey, the Reference Year is the CY prior to the Data Collection Year. The Reference Year applies to hospices submitting a size exemption from the CAHPS survey (there is no similar exemption for HIS). For example, for the CY 2022 data collection year, the Reference Year, is CY 2021. This means providers seeking a size exemption for CAHPS in CY 2022 would base it on their hospice size in CY 2021. Submission requirements are codified in § 418.312.

For every CY, all Medicare-certified hospices are required to submit HIS and CAHPS data according to the requirements in § 418.312. Table 21 summarizes the three timeframes described above. It illustrates how the CY interacts with the FY payments, covering the CY 2020 through CY 2023 data collection periods and the corresponding APU application from FY 2022 through FY 2025.

TABLE 21: HQRP Reporting Requirements and Corresponding Annual Payment Updates

Reporting Year for HIS and Data Collection Year for CAHPS data (Calendar year)	Annual Payment Update Impacts Payments for the FY	Reference Year for CAHPS Size Exemption (CAHPS only)
CY 2020	FY 2022 APU	CY 2019
CY 2021	FY 2023 APU	CY 2020
CY 2022	FY 2024 APU*	CY 2021
CY 2023	FY 2025 APU	CY 2022

* Beginning in FY 2024 and all subsequent years, the payment penalty is 4 percent. Prior to FY 2024, the payment

As illustrated in Table 21, CY 2020 data submissions compliance impacts the FY 2022 APU. CY 2021 data submissions compliance impacts the FY 2023 APU. CY 2022 data submissions compliance impacts FY 2024 APU. This CY data submission impacting FY APU pattern follows for subsequent years.

c. Submission Data and Requirements

As finalized in the FY 2016 Hospice Wage Index and Payment Rate Update final rule (80 FR 47192), hospices' compliance with HIS requirements beginning with the FY 2020 APU determination (that is, based on HIS-Admission and Discharge records submitted in CY 2018) are based on a timeliness threshold of 90 percent. This means CMS requires that hospices submit 90 percent of all required HIS records within 30-days of the event (that is, patient's admission or discharge). The 90-percent threshold is hereafter referred to as the timeliness compliance threshold. Ninety percent of all required HIS records must be submitted and accepted within the 30-day submission deadline to avoid the statutorily-mandated payment penalty.

To comply with CMS' quality reporting requirements for CAHPS, hospices are required to collect data monthly using the CAHPS Hospice Survey. Hospices comply by utilizing a CMS-approved third-party vendor. Approved Hospice CAHPS vendors must successfully submit data on the hospice's behalf to the CAHPS Hospice Survey Data Center. A list of the approved vendors can be found on the CAHPS Hospice Survey website: *www.hospicecahpssurvey.org.* Table 22. HQRP Compliance Checklist illustrates the APU and timeliness threshold requirements.

TABLE 22: HQRP Compliance Checklist

Annual Payment Update	HIS	CAHPS
FY 2022	Submit at least 90 percent of all HIS records within 30 days of the event date (patient's admission or discharge) for patient admissions/discharges occurring 1/1/20 – 12/31/20.	Ongoing monthly participation in the Hospice CAHPS survey 1/1/2020 – 12/31/2020
FY 2023	Submit at least 90 percent of all HIS records within 30 days of the event date (patient's admission or discharge) for patient admissions/discharges occurring 1/1/21 – 12/31/21.	Ongoing monthly participation in the Hospice CAHPS survey 1/1/2021 – 12/31/2021
FY 2024	Submit at least 90 percent of all HIS records within 30 days of the event date (patient's admission or discharge) for patient admissions/discharges occurring 1/1/22 – 12/31/22.	Ongoing monthly participation in the Hospice CAHPS survey 1/1/2022 – 12/31/2022

Most hospices that fail to meet HQRP requirements do so because they miss the 90 percent threshold. We offer many training and education opportunities through our website, which are available 24/7, 365 days per year, to enable hospice staff to learn at the pace and time of their choice. We want hospices to be successful with meeting the HQRP requirements. We encourage hospices to use this website at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Hospice-Quality-Reporting-Training-Training-and-Education-Library.*

For more information about HQRP Requirements, please visit the frequently-updated HQRP website and especially the Best Practice, Education and Training Library, and Help Desk web pages at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting.* We also encourage members of the public to go to the HQRP web page and sign-up for the Hospice Quality ListServ to stay informed about HQRP.

d. Update on Transition to iQIES

In the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38484), we finalized the proposal to migrate our systems for submitting and processing assessment data. Hospices are currently required to submit HIS data to CMS using the Quality Improvement and Evaluation System (QIES) Assessment and the Submission Processing (ASAP) system. The FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38484) finalized the proposal to migrate to a new internet Quality Improvement and Evaluation System (iQIES) that will enable us to make real-time upgrades. We are designating that system as the data submission system for the Hospice QRP. We will notify the public about any system migration updates using subregulatory mechanisms such as web page postings, listserv messaging, and webinars.

10. Public Display of ''Quality Measures'' and Other Hospice Data for the HQRP

a. Background

Under section 1814(i)(5)(E) of the Act, the Secretary is required to establish procedures for making any quality data submitted by hospices available to the public. These procedures shall ensure that individual hospices have the opportunity to review their data prior to these data being made public on our designated public website. To meet the Act's requirement for making quality measure data public, we launched Hospice Compare in August 2017. This website allows consumers, providers, and other stakeholders to search for all Medicare-certified hospice providers and view their information and quality measure scores. In September 2020, CMS transitioned Hospice Compare to the *Care Compare* website. Hospice Compare was discontinued in December 2020. Care Compare supports all Medicare settings and fulfills the Act's requirements for the HQRP. For more information about Care Compare, please see the Update on the Hospice Quality Reporting Requirements for FY 2022 in section D.

Since 2017, we have increased and improved available information about the care hospices provide for consumers. To indicate the quality of care hospices provide, we first posted the seven HIS Measures (NQF #1641, NQF #1647, NQF #1634, NQF #1637, NQF #1639, NQF #1638, and NQF #1617) in 2017, and then added the CAHPS Hospice Survey measure (NQF #2651) and the HIS Comprehensive Assessment at Admission (NQF #3235) in 2018. In 2019, we added the Hospice Visits When Death is Imminent (Measure 1) to the website.

As discussed above, we propose to remove the seven HIS Measures from public reporting on Care Compare no earlier than May 2022. The Hospice Item Set V3.00 PRA Submission replaced the HVWDII measure with a more robust version: The claims-based measure HVLDL. We propose to publicly report the HVLDL no earlier than May 2022. We are also proposing to publicly report the HCI, another claims-based measure no earlier than May 2022. In addition to the publicly-reported quality measure data, in 2019 we added to public reporting, information about the hospices' characteristics, taking raw data available from the Medicare Public Use File and other publicly-available government data sources and making them more consumer friendly and accessible for people seeking hospice care for themselves or family members, (83 FR 38649). This publicly reported information currently includes diagnoses, location of care, and levels of care provided.

b. Proposal Regarding Data Collection and Reporting During a Public Health Emergency

(1). Background: COVID–19 Public Health Emergency Temporary Exemption and Its Impact on the Public Reporting Schedule

Under authority of section 319 of the Public Health Service (PHS) Act, the Secretary declared a Public Health Emergency (PHE) effective as of January 27, 2020. On March 13, 2020, the President declared a national state of emergency under the Stafford Act, effective March 1, 2020, allowing the Secretary to invoke section 1135(b) of the Act (42 U.S.C. 1320b–5) to waive or modify the requirements of titles XVIII, XIX, and XXI of the Act and regulations to the extent necessary to address the COVID–19 PHE. Many waivers and modifications were made effective as of March 1, 2020 [53] [54] in accordance with the president's declaration. On March 27, 2020, we sent a guidance memorandum under the subject title, ''Exceptions and Extensions for Quality Reporting Requirements for Acute Care Hospitals, PPS-Exempt Cancer Hospitals, Inpatient Psychiatric Facilities, Skilled Nursing Facilities, Home Health Agencies, Hospices, Inpatient Rehabilitation Facilities, Long-Term Care Hospitals, Ambulatory Surgical Centers, Renal Dialysis Facilities, and MIPS Eligible Clinicians Affected by COVID–19'' [55] to the Medicare Learning Network (MLN) Connects Newsletter and Other Program-Specific Listserv Recipients,[56] hereafter referred to as the March 27, 2020 CMS Guidance Memorandum. In that memo, which applies to HIS and CAHPS Hospice Survey, CMS granted an exemption to the HQRP reporting requirements for Quarter 4 (Q4) 2019 (October 1, 2019 through December 31, 2019), Quarter 1 (Q1) 2020 (January 1, 2020 through March 30, 2020), and Quarter 2 (Q2) 2020 (April 1, 2020 through June 30, 2020). We discuss the impact to the HIS here, and the impact to the CAHPS Hospice Survey further below. For HIS, the quarters are defined based on submission of HIS admission or discharge assessments.

The exemption has impacted the public reporting schedule. Since launching Hospice Compare in 2017, HIS-measures have been reported using 4 quarters of data. The 4 quarters included are the most recent data that have gone through Review and Correct processes, have been issued in a provider preview report, and have time allotted for addressing requests for data suppression before being publicly reported. As discussed in the FY 2017 Hospice Wage Index and Payment Rate Update final rule (81 FR 52183), CMS requires at least 4 quarters of data to establish the scientific acceptability for our HIS-based quality measures. For CAHPS-based measures, we have reported CAHPS measures using eight rolling quarters of data on Hospice Compare since 2018. In the FY 2017 Hospice Wage Index and Payment Rate Update final rule (81 FR 52143), we stated that we would continue CAHPS reporting with eight rolling quarters on an ongoing basis. This original public reporting schedule included the exempted quarters of Q4 2019 and Q1 and Q2 2020 in six refreshes for HIS and 11 refreshes for CAHPS. Table 23 displays the original schedule for public reporting prior to the COVID–19 PHE.

[53] Azar, A.M. (2020 March 15). *Waiver or Modification of Requirements Under Section 1135 of the Social Security Act.* Public Health Emergency. *https://www.phe.gov/emergency/news/healthactions/section1135/Pages/covid19-13March20.aspx.*

[54] *https://www.phe.gov/emergency/news/healthactions/section1135/Pages/covid19-13March20.aspx.*

[55] *https://www.cms.gov/files/document/guidance-memo-exceptions-and-extensions-quality-reporting-and-value-based-purchasing-programs.pdf.*

[56] (2020, March 27). Exceptions and Extensions for Quality Reporting Requirements for Acute Care Hospitals, PPS-Exempt Cancer Hospitals, Inpatient Psychiatric Facilities, Skilled Nursing Facilities, Home Health Agencies, Hospices, Inpatient Rehabilitation Facilities, Long-Term Care Hospitals, Ambulatory Surgical Centers, Renal Dialysis Facilities, and MIPS Eligible Clinicians Affected by COVID–19. Centers for Medicare & Medicaid Services. *https://www.cms.gov/files/document/guidance-memo-exceptions-and-extensions-quality-reporting-and-value-based-purchasing-programs.pdf.*

TABLE 23: Original Public Reporting Schedule with Refreshes Affected by PHE Exemptions for the HQRP

Quarter Refresh	HIS Quarters in Original Schedule for Care Compare	CAHPS Quarters in Original Schedule for Care Compare
*November 2020	Q1 2019- Q4 2019	Q1 2018-Q4 2019
*February 2021	Q2 2019- Q1 2020	Q2 2018-Q1 2020
*May 2021	Q3 2019-Q2 2020	Q3 2018-Q2 2020
*August 2021	Q4 2019- Q3 2020	Q4 2018-Q3 2020
*November 2021	Q1 2020- Q4 2020	Q1 2019-Q4 2020
*February 2022	Q2 2020-Q1 2021	Q2 2019-Q1 2021
†May 2022	Q3 2020-Q2 2021	Q3 2019-Q2 2021
†August 2022	Q4 2020-Q3 2021	Q4 2019-Q3 2021
†November 2022	Q1 2021-Q4 2021	Q1 2020-Q4 2021
†February 2023	Q2 2021-Q1 2022	Q2 2020-Q1 2022
†May 2023	Q3 2021-Q2 2022	Q3 2020-Q2 2022

*Exemption affects both HIS and CAHPS data for refresh; †Exemption affects only CAHPS data for refresh.

During the spring and summer of 2020, we conducted testing to inform decisions about publicly reporting data for those refreshes which include exempt data. The testing helped us develop a plan for posting data as early as possible, for as many hospices as possible, and with scientific acceptability similar to standard threshold for public reporting. The following sections provide the results of our testing and explain how we used the results to develop a plan that we believe allows us to achieve these objectives as best as possible.

(2). Update on Use of Q4 2019 Data and Data Freeze for Refreshes in 2021

In the March 27, 2020 Guidance Memorandum, we stated that we should not include any post-acute care (PAC) quality data that are greatly impacted by the exemption in the quality reporting programs. Given the timing of the PHE onset, we determined that we would use any data that was submitted for Q4 2019. We conducted analyses of those data to ensure that their use was appropriate. In the original schedule (Table 23) the November 2020 refresh includes Q4 2019 data for HIS- and CAHPS-based measures (Q1 through Q4 2019 for HIS data and Q1 2018 through Q4 2019 for CAHPS data) and is the last refresh before Q1 2020 data are included. Before proceeding with the November 2020 refresh, we conducted testing to ensure that, even though we made an exception to reporting requirements for Q4 2019 in March 2020, public reporting would still allow us to publicly report data for a similar number of hospice providers, as compared to standard reporting. Specifically, we compared submission rates in Q4 2019 to average annual rates (Q4 2018 through Q3 2019) to assess the extent to which hospices had taken advantage of the exemption, and thus the extent to which data and measure scores might be affected. We observed that the HIS data submission rate for Q4 2019 was in fact 1.8 percent higher than the previous CY (Q4 2018). For the CAHPS Hospice Survey, 2.1 percent more hospices submitted data in Q4 2019 than in Q4 2018. We note that Q4 2019 ended before the onset of the COVID–19 PHE in the United States (U.S.). Thus, we proceeded with including these data in measure calculations for the November 2020 refresh.

As for Q1 and Q2 2020, we determined that we would not use HIS or CAHPS data from these quarters for public reporting given the timing of the PHE onset. All refreshes, during which we decided to hold these data constant, included more than 2 quarters of data that were affected by the CMS-issued COVID reporting exceptions; thus we did not have an adequate amount of data to reliably calculate and publicly display provider measures scores. Consequently, we determined to freeze the data displayed, that is, holding data constant after the November 2020 refresh without subsequently updating the data through November 2021. This decision was communicated to the public in a Public Reporting Tip Sheet, which is located at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/HQRP-Requirements-and-Best-Practices.*

(3). Proposal for Public Reporting of HIS-Based Measures With Fewer Than Standard Numbers of Quarters Due to PHE Exemption in February 2022

As noted above, we used Q4 2019 data for public reporting in November 2020 and froze that data for the February, May, August, and November 2021 refreshes. This addressed five of the six PHE-affected quarters for HIS-based measures, and five of the 11 PHE-affected quarters of CAHPS-based measures.

Because November 2020 refresh data will become increasingly out-of-date and thus less useful for consumers, we analyzed whether it would be possible to use fewer quarters of data for the last refresh affected by the exemption (February 2022) and thus more quickly resume public reporting with updated quality data. Using fewer quarters of more recent data, the first option, would require that (1) a sufficient percentage of providers would still likely have enough assessment data to report quality measures (reportability); and (2) fewer quarters would likely produce similar measure scores for hospices, and thus not unfairly represent the quality of care hospices provide during the period reported in a given refresh (reliability). To assess these criteria, we conducted reportability and reliability analysis using 3 quarters of data in a refresh, instead of the standard 4 quarters of data for reporting HIS-based measures. Specifically, we used historical data to calculate HIS-based quality measures under two scenarios:

- Standard Public Reporting (SPR) Scenario: We used data from the four quarters of CY 2019, which represent CY 2020 public reporting in the absence of the temporary exemption from the submission of PAC quality data, as the basis for comparing simulated alternatives. For HIS-based measures, we used quarters Q1 through Q4 2019.
- COVID–19 PHE Affected Reporting (CAR) Scenario: We calculated quality measures using Q2 2019, Q3 2019, and Q4 2019 data, to simulate using only Q3 2020, Q4 2020, and Q1 2021 data for public reporting.

The HIS Comprehensive Assessment Measure is based on the receipt of care processes at the time of admission. Therefore for the COVID–19 Affected Reporting (CAR) Scenario, we excluded data for patient stays with admission dates in Q1 2019.

For each scenario, we calculated the reportability as the percent of hospices meeting the 20-case minimum for public reporting (the public reporting threshold). To test the reliability of restricting the providers included in the Standard Public Reporting (SPR) Scenario to those included in the CAR Scenario, we performed three tests. First, we evaluated measure correlation using the Pearson and Spearman correlation coefficients, which assess the alignment of hospices' HIS Comprehensive Assessment Measure scores between scenarios. Second, for each scenario, we conducted a split-half reliability analysis and estimated intra-class correlation (ICC) scores, where higher scores imply better internal reliability. Modest differences in ICC scores between scenarios would suggest that using fewer quarters of data does not impact the internal reliability of the results. Third, we estimated reliability scores. A higher value in these scores indicates that HIS Comprehensive Assessment Measure values are relatively consistent for patients admitted to the same hospice and variation in the measure reflects true differences across providers.

Testing results show that the CAR scenario—specifically using 3 quarters of data for the HIS Comprehensive Assessment Measure—demonstrates acceptable levels of reportability and reliability. As displayed in Table 24, the number of providers who met the public reporting threshold for the HIS Comprehensive Assessment Measure decreases by 236 (or by 5.2 percentage points) when reporting three versus four quarters of data. In the FY 2014 Hospice Wage Index and Payment Rate Update final rule (78 FR 48234) we stated that reportability of 71 percent through 90 percent is acceptable. Therefore using 3 quarters of data for the HIS Comprehensive Assessment Measure would achieve acceptable reportability shown in Table 24.

TABLE 24: Reportability: Percent of Providers Meeting Measure Public Reporting Thresholds

	Reportability		
Measure	COVID-19 Affected Reporting (CAR) Met Threshold # (%) Providers	Standard Public Reporting (SPR) Met threshold # (%) Providers	Difference (CAR -SPR)
HIS Comprehensive Assessment Measure	3,842 (83.9%)	4,078 (89.1%)	-236 (-5.2%)

Table 24 indicates that the reliability of the HIS Comprehensive Assessment Measure scores is similar for the CAR and SPR scenarios. Testing also yielded correlation coefficients above 0.9, indicating a high degree of agreement between hospices' HIS Comprehensive Assessment Measure scores when using 3 or 4 quarters of data. The results also show that the HIS Comprehensive Assessment Measure's ICC for CAR and SPR scenarios are similar, with only a 0.02 difference. This implies high internal reliability of the measure in both scenarios. The median reliability scores for the HIS Comprehensive Assessment Measure are also very similar in both CAR and SPR scenarios. This indicates that scores estimated using 3 quarters of data continue to capture provider-level differences and that admission-level scores remain consistent within hospices.

TABLE 25: Reliability: Correlations, Split-Half Testing, and Reliability Score for COVID-19 Affected (CAR) and Standard Public Reporting (SPR) Scenarios

	Correlation between CAR and SPR		Split-Half Reliability Testing			Reliability Score		
Measure	Pearson	Spearman	ICC (CAR)	ICC (SPR)	Difference (CAR - SPR)	Median Score (CAR)	Median Score (SPR)	Difference (CAR - SPR)
HIS Comprehensive Assessment Measure	0.98	0.96	0.95	0.93	0.02	97.5	97.7	-0.2

ICC = raIntra-class Coefficient

In Table 25, we explore changes in hospices' relative rankings between the SPR and CAR scenarios. For each scenario, we divided hospices in quintiles based on their HIS Comprehensive Assessment Measure score, such that higher scores are in a higher quintile. Changes in a hospices' quintile from the SPR to CAR scenario would indicate a re-ranking of hospices when using 3 quarters compared to 4 quarters. Over 93 percent of hospices remain in the same quintile, suggesting that the ranking of hospices is fairly stable between the SPR and CAR scenarios.

TABLE 26: Performance: Comparison of Quintile Rankings between COVID-19 PHE Affected (CAR) and Standard Public Reporting (SPR) Scenarios

	Overall			Rural Providers			Urban Providers		
Measure	% Same Quintile	% CAR Lower Quintile	% CAR Higher Quintile	% Same Quintile	% CAR Lower Quintile	% CAR Higher Quintile	% Same Quintile	% CAR Lower Quintile	% CAR Higher Quintile
HIS Comprehensive Assessment Measure	93.4%	2.4%	4.2%	93.5%	2.1%	4.4%	93.3%	2.5%	4.2%

We also used the results presented in Table 26 to assess the option of reporting Q4 2019, Q3 2020, Q4 2020, and Q1 2021 for the February 2022 refresh. This option maintains requirements in the FY 2017 Hospice Wage Index and Payment Update final rule for publicly reporting 4 quarters of data, but it requires using some data that are more than 2 years old. Also, the relatively high number of hospices that meet the public reporting threshold in the CAR scenario, relative to the SPR scenario, with just 3 quarters of data justify the use of 3 quarters in the unusual circumstances of the PHE and its associated exemptions.

We propose that, in the COVID–19 PHE, we would use 3 quarters of HIS data for the final affected refresh, the February 2022 public reporting refresh of Care Compare for the Hospice setting. Using 3 quarters of data for the February 2022 refresh would allow us to begin displaying Q3 2020, Q4 2020, and Q1 2021 data in February 2022, rather than continue displaying November 2020 data (Q1 2019 through Q4 2019). We believe that updating the data in February 2022 by more than a year relative to the November 2020 freeze data would assist consumers by providing more relevant quality data and allow hospices to demonstrate more recent performance. Our testing results indicate we can achieve these positive impacts while maintaining high standards for reportability and reliability. Table 27 summarizes the comparison between the original schedule for public reporting with the revised schedule (that is, frozen data) and with the proposed schedule that is, using 3 quarters in the February 2022 refresh.

We seek public comment on this proposal to use 3 quarters of HIS data for the February 2022 public reporting refresh.

TABLE 27: Original, Revised, and Proposed Schedule for Refreshes Affected by COVID-19 PHE Exemptions

Quarter Refresh	HIS Quarters in Original Schedule for Care Compare (number of quarters)	HIS Quarters in revised/proposed Schedule for Care Compare (number of quarters)
November 2020	Q1 2019- Q4 2019 (4)	Q1 2019- Q4 2019 (4)
February 2021	Q2 2019- Q1 2020 (4)	Q1 2019- Q4 2019 (4)
May 2021	Q3 2019-Q2 2020 (4)	Q1 2019- Q4 2019 (4)
August 2021	Q4 2019- Q3 2020 (4)	Q1 2019- Q4 2019 (4)
November 2021	Q1 2020- Q4 2020 (4)	Q1 2019- Q4 2019 (4)
February 2022	Q2 2020-Q1 2021 (4)	Q3 2020-Q1 2021 (3)

Note: The shaded cells represent data frozen due to COVID-19 PHE.

(4). Proposal for Public Reporting of ''CAHPS Hospice Survey-Based Measures'' Due to PHE Exemption

Prior to COVID–19 PHE, the CAHPS Hospice Survey publicly reported the most recent eight rolling quarters of data. We propose to continue to report the most recent 8 quarters of available data after the freeze, but not to include the data from the exempted quarters of Q1 and Q2 of 2020 as issued in the March 27, 2020 Guidance Memorandum with the effected quarters discussed above. The optional data submission for Q4 2019 results in publicly reporting of that data since the CAHPS Hospice Survey from that quarter were not impacted. The data submitted for Q4 2019 referred to deaths that occurred prior to COIVD–19. For the CAHPS Hospice Survey, 2.1 percent more hospices submitted data in Q4 2019 than in the same quarter a year earlier.

Like HIS, our goal is to report as much of the most recent CAHPS Hospice Survey data as possible, to display data for as many hospices as possible, and to maintain the reliability of the data.

Similar to HIS, the CAHPS Hospice Survey reviewed the data for reportability using fewer quarters than normal. However, we found that using fewer than 8 quarters of data would have two important negative impacts on public reporting. First, it would reduce the proportion of hospices that would have CAHPS Hospice Survey data displayed on Care Compare. An analysis of the 8 quarters of data from Q1 2018 through Q4 2019 (publicly reported in November 2020) shows there were 5,041 active hospices. Of these hospices: 2,941 (58.3 percent) had 30+ completes for those 8 quarters, and had scores publicly reported. Fewer hospices, 2,328 (46.2 percent), would have had 30+ completes if 4 quarters of data were used to calculate scores and 1,970 (39.1 percent) would have 30+ completes if 3 quarters were used to calculate scores. In addition, the overall reliability of the CAHPS scores would decline with fewer quarters of data. For these reasons, we determined the best course of action would be to continue to publicly report the most recent 8 quarters of data, but exempting Q1 and Q2 2020. This will allow us to maximize the number of hospices that will have CAHPS scores displayed on Care Compare, protect the reliability of the data, and report as much of the most recent data as possible.

CMS froze CAHPS data starting with the November 2020 refresh and concluding with the November 2021 refresh. We propose that starting with the February 2022 refresh, CMS will display the most recent 8 quarters of CAHPS Hospice Survey data, excluding Q1 and Q2 2020. We will resume public reporting by displaying 3 quarters of post-exemption data, plus five quarters of pre-exemption data. (Please see Table 28.) We propose that in each refresh subsequent to February 2022, we will report one more post-exemption quarter of data and one fewer pre-exemption quarter of data until we reach eight quarters of post-exemption data in May of 2023. We further propose that as of August 2023, we will resume reporting a rolling average of the most recent 8 quarters of data. Table 28 specifies the quarters for each refresh. This will allow us to report the maximum amount of new data, maintain reliability of the data, and permit the maximum number of hospices to receive scores. In addition, Table 28 shows the proposed CAHPS public reporting schedule during and after the data freeze.

TABLE 28: Proposed CAHPS Hospice Survey Public Reporting Quarters During and After the Freeze

Refresh	Publicly Reported Quarters
Freeze:	*Q1 2018-Q4 2019*
*November 2020-November 2021**	
February 2022	Q4 2018 – Q4 2019, Q3 2020 – Q1 2021
May 2022	Q1 2019-Q4 2019, Q3 2020-Q2 2021
August 2022	Q2 2019-Q4 2019, Q3 2020-Q3 2021
November 2022	Q3 2019-Q4 2019, Q3 2020-Q4 2021
February 2023	Q4 2019, Q3 2020-Q1 2022
May 2023	Q3 2020-Q2 2022
*The grey shading refers to the frozen quarters.	

We seek public comment on this proposal to publicly report the most-recently available 8 quarters of CAHPS data starting with the February 2022 refresh and going through the May 2023 refresh on Care Compare because we cannot publicly report Q1 2020 and Q2 2020 data due to the COVID–19 PHE.

c. Quality Measures To Be Displayed on Care Compare in FY 2022 and Beyond

(1). Proposal To Remove Seven ''Hospice Item Set Process Measures'' From Public Reporting

As discussed earlier, we are proposing to remove the seven HIS process measures from the HQRP as individual measures, and no longer applying them to the FY 2024 APU and thereafter. We propose to remove the seven HIS process measures no earlier than May 2022 refresh from public reporting on Care Compare and from the Preview Reports but continue to have it publicly available in the data catalogue at *https://data.cms.gov/provider-data/topics/hospice-care.* We are seeking public comment on this proposal to remove the seven HIS process measures from public reporting on Care Compare.

(2). Proposals for Calculating and Publicly Reporting ''Claims-Based Measure'' as Part of the HQRP

In the HIS V3.00 Paperwork Reduction Act Submission (OMB control number: 0938–1153, CMS–10390), we finalized a proposal to adopt HVLDL into the HQRP for FY 2021. We are also proposing in this rule, discussed above, to adopt the HCI into the HQRP for FY2022. In this section, we present four proposals related to calculating and reporting claims-based measures, with specific application to HVLDL and HCI. First, we propose to extract claims data to calculate claims-based measures at least 90 days after the last discharge date in the applicable period, which we will use for quality measure calculations and public reporting on Care Compare. For example, if the last discharge date in the applicable period for a measure is December 31, 2022, for data collection January 1, 2022, through December 31, 2022, we would create the data extract on approximately March 31, 2023, at the earliest. We would use those data to calculate and publicly report the claims-based measures for the CY2022 reporting period. This proposal is similar to those finalized in other PAC settings, including the CY 2017 Home Health Prospective Payment System final rule (81 FR 76702), FY 2017 Inpatient Rehabilitation Facility Prospective Payment System final rule (81 FR 52056), and the FY 2017 Long Term Care Hospital Prospective Payment System final rule (81 FR 56762).

The proposed timeframe allows us to balance providing timely information to the public with calculating the claims-based measures using as complete a data set as possible. We recognize that the proposed approximately 90-day ''run-out'' period is shorter than the Medicare program's current timely claims filing policy under which providers have up to 1 year from the date of discharge to submit claims. However, several months lead-time is necessary after acquiring the data to conduct the claims-based calculations. If we were to delay our data extraction point to 12 months after the last date of the last discharge in the applicable period, we would not be able to deliver the calculations to hospices sooner than 18 to 24 months after the last discharge.

To implement this process, hospices would not be able to submit corrections to the underlying claims snapshot or add claims (for those claims-based measures) to this data set at the

conclusion of the 90-day period following the last date of discharge used in the applicable period. Therefore, we would consider the hospice claims data to be complete for purposes of calculating the claims-based measures at this point. Thus, it is important that hospices ensure the completeness and correctness of their claims prior to the claims ''snapshot.''

Second, we propose that we will update the claims-based measures used for the HQRP annually. Specifically, we will refresh claims-based measure scores on Care Compare, in preview reports, and in the confidential CASPER QM preview reports annually. This periodicity of updates aligns with most claims-based measures across PAC settings.

Third, we propose that we will calculate claims-based measure scores based on one or more years of data. We considered several factors to determine the number of years to include in measure calculations. Using only 1 year (4 quarters) of data, as is currently done for HIS-based quality measures reported on Care Compare, allows us to share with the public only the most up-to-date information and best reflects current realities. Having only the most recent data can also help incentivize hospices with lower scores to make changes and have the results of their effort be reflected in better scores.

At the same time, we want to report measures scores to the public for as many hospices as possible, including small hospices. Currently, only Medicare-certified hospices with more than 20 discharges each year have quality measure results publicly available on Care Compare. This public reporting threshold protects the privacy of patients who seek care at smaller hospices. However, due to the threshold, at least some hospices will not achieve the minimum patient discharges within 1 year. This means that their scores will not be displayed on Care Compare, and consumers will not have information about them to inform their decisions about selecting a hospice. Using more years of data allows more of these hospices to meet this threshold.

We conducted reportability testing for HCI and HVLDL to help us consider how best to balance the need for recent data with the need for transparency in reporting the HQRP claims-based measures. Specifically, we conducted a simulation using 2 years of data. We then calculated the change in the number of hospices which achieved the minimum reporting standard. We also compared the measure scores of the hospices that meet the reporting threshold when we use 2 years of data with hospices that meet the threshold using only 1 year of data.

Results for both HCI and HVLDL indicate that using 2 years of data increases reportability. For HVLDL, combining 2 years of data (FY 2018 to FY 2019) allows an additional 326 hospices to share measure scores, or 33.8 percent of the hospices that do not meet the reporting threshold in FY 2019 alone. For HCI, combining 2 years of data (FY 2018 to FY 2019 data) allows an additional 277 to report HCI measure scores on Care Compare, or 43.2 percent of the hospices that do not meet the reporting threshold in FY 2019 alone.

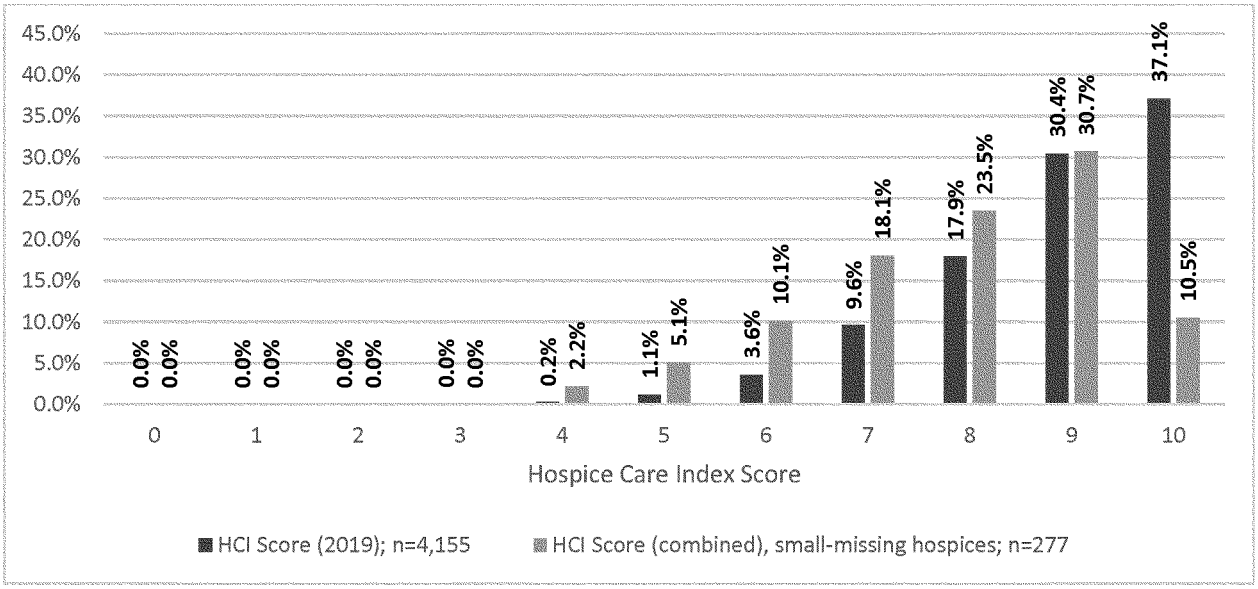
TABLE 29: Two years of Data Increases Reportability for HVLDL and HCI

Quality Measure	Excluded hospices when using one year of data (FY 2019) alone	Additional hospices meeting threshold with two years of data (FY 2018 – FY 2019), relative to FY 2019 alone	% of hospices that did not meet threshold in FY 2019
HVLDL	965	326	33.8%
HCI	641	277	43.2%

Our simulations indicate that the hospices that only meet the reporting threshold when using 2 years of data have performance scores substantially lower than average. For HVLDL, where higher scores indicate better quality of care, the national average score was 65.5 percent in FY 2019, where 965 hospices did not meet the reportability threshold. After pooling data using FY 2018 to FY 2019, 326 additional hospices met the reportability threshold, or 33.8 percent of those previously missing. Those addition 326 hospices had an average HVLDL score of just 43.3 percent, about 20 percentage points lower than the hospices meeting the reportability threshold using FY 2019 alone national average score for this HVLDL measure.

The results for HCI similarly show that the hospices with reportable data when using two-pooled years of data had lower HCI scores compared to the national average when using just FY 2019 data. Higher HCI scores indicate better performance. As Figure 7 shows, a larger numbers of hospices among the 277 hospices that only meet the reporting threshold when using 2 years of data had HCI scores between four and eight, while a larger number of hospices in the FY 2019 population had a perfect score of 10.

Figure 7: Percent of hospices meeting the public reporting threshold based on 1 (FY 2019) or 2 pooled years (FY 2018 to FY 2019) of data, by Hospice Care Index score



Source: 100% Medicare claims, Federal Fiscal Years 2018-2019.

Given these findings, we propose using 2 years of data to publicly report HCI and HVLDL in 2022. The use of 2 years or 8 quarters of quality data is already publicly reported for the quality measures related to the CAHPS Hospice Survey so hospices are familiar with this approach. We plan to consider multiple years of data, like the 2 years of data, for other claims-based measures proposed in subsequent years. We believe it is important to support consumers by sharing information on the performance of hospices that have lower scores, and to incentivize those hospices to improve. The results demonstrate that using multiple years of data help include more hospices that have lower performance rates for HVLDL and HCI in public reporting on Care Compare. While using more years of data would allow us to report measures for even more hospices, it would involve sharing data that are no longer relevant, and display scores that do not reflect recent hospice improvement efforts.

We are soliciting public comment on these proposals related to the using 2 years of data for claims-based measures and public reporting of claims measures in general and their application to HVLDL and HCI specifically.

(3). Proposal To Publicly Report the Hospice Care Index and ''Hospice Visits in the Last Days of Life'' Claims-Based Measures

As discussed previously, we are proposing to publicly report the HCI and HVLDL using 2 years, which is 8 quarters of Medicare claims data. We propose to publicly report the HCI and HVLDL beginning no earlier than May 2022 using FY2021 Medicare hospice claims data, and to include it in the Preview Reports no sooner than the May 2022 refresh. The publicly-reported version of HCI on Care Compare will only include the final HCI score, and not the component indicators. The Preview Reports will reflect the HCI as publicly reported. We are seeking public comment on this proposal for HCI and HVLDL public reporting on Care Compare no sooner than May 2022.

(4). Update on Publicly Reporting for the ''Hospice Visits When Death is Imminent (HVWDII) Measure 1'' and the ''Hospice Visits in the Last Days of Life (HVLDL) Measure''

As discussed earlier, the HIS V3.00 PRA Submission, CMS–10390 (OMB control number: 0938–1153), finalized the proposal to replace the HVWDII measure pair with a re-specified version called HVLDL, which is a single measure based on Medicare claims. Relatedly, in the HIS V3.00 PRA Submission, CMS–10390 (OMB control number: 0938–1153), we finalized the proposal to remove Section O from the HIS. As stated in section 1814(i)(5)(E) of the Act, we establish procedures for making all quality data submitted by hospices under § 418.312 available to the public. Thus, we would have continued to publicly report HVWDII Measure 1 data through the November 2021 refresh. Because of the data freeze detailed above, HVWDII Measure 1 data from the November 2020 refresh, covering HIS admissions during Q1 through Q4 2019, will be publicly displayed for all calendar year 2021 refreshes. We may retain the November 2020 refresh for HVWDII Measure 1 for one or more refreshes in 2022, when there will be no HIS Section O data, if doing so will allow us to consolidate changes and thus operate more efficiently.

d. Update on Transition From Hospice Compare to Care Compare and Provider Data Catalog

In September 2020, we launched *Care Compare,* a streamlined redesign of eight existing CMS healthcare compare tools available on *Medicare.gov,* including Hospice Compare. Care Compare provides a single user-friendly interface that patients and family caregivers can use to make informed

decisions about healthcare based on cost, quality of care, volume of services, and other data. With just one click, patients can find information that is easy to understand about doctors, hospitals, nursing homes, and other health care services instead of searching through multiple tools.

For the last six years, Medicare's Hospice Compare has served as the cornerstone for publicizing quality care information for patients, family caregivers, consumers, and the healthcare community. The new website builds on the *eMedicare initiative* to deliver simple tools and information to current and future Medicare beneficiaries. Drawing on lessons learned through research and stakeholder feedback, Care Compare includes features and functionalities that appeal to Hospice Compare consumers. By offering an accessible and user-friendly interface and a simple design that is optimized for mobile and tablet use, it is easier than ever to find information that is important to patients when shopping for healthcare. Enhancements for mobile use will give practical benefits like accessing the tool using a smartphone that can initiate phone calls to providers simply by clicking on the provider's phone number.

In conjunction with the Care Compare launch, we have made additional improvements to other CMS data tools, to help Medicare beneficiaries compare costs. Specifically, the *Provider Data Catalog* (PDC) better serves innovators and stakeholders who are interested in detailed CMS data and use interactive and downloadable datasets like those currently available on *data.Medicare.gov.* The PDC now makes quality datasets available through an improved Application Programming Interface (API), allowing innovators in the field to easily access and analyze the CMS publicly-reported data and make it useful for patients.

e. Update on Additional Information on Hospices for Public Reporting

In the FY 2019 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements final rule (83 FR 38622), we finalized plans to publicly post information from the Medicare Provider Utilization and Payment Data: Hospice Public Use File (PUF) and other publicly-available CMS data to Hospice Compare or another CMS website. Hospice PUF data are available for CY 2014 through CY 2016. Beginning with CY 2017 data, hospice PUF data are public as part of the Post-Acute Care and Hospice Provider Utilization and Payment PUF (hereafter PAC PUF). For more information, please visit the PAC PUF web page at: *https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Medicare-Provider-Charge-Data/PAC2017.* Both the Hospice and PAC PUFs provide information on services provided to Medicare beneficiaries by hospice providers. Specifically, they contain information on utilization, payment (Medicare payment and standard payment), submitted charges, primary diagnoses, sites of service, and beneficiary demographics organized by CCN (6-digit provider identification number) and state.

PUF data, along with clear text explaining the purpose and uses of this information and suggesting consumers discuss this information with their healthcare provider, first displayed in a consumer-friendly format on Hospice Compare in May 2019. Beginning May 2021, we will begin to display additional information from the PAC PUF on Care Compare. This additional information includes hospices' beneficiary characteristics such as the percentage of patients enrolled in Medicare Advantage. In addition, consumers will see whether a hospice provided services to Medicare Advantage enrollees or patients who have coverage under both Medicaid and Medicare, also called dual eligible patients. The data for these additional characteristics are pulled directly from the PAC PUF file and provide potential hospice service patients and family caregivers with more detail prior to selecting a hospice.

As finalized in the FY 2019 Hospice Wage Index and Payment Update final rule (83 FR 38622), we also improved access to publicly-available information about hospices' compliance with Hospice QRP requirements. Specifically, we already post the annual Hospice APU Compliant List on the *HQRP Requirements and Best Practices* web page. This document displays the CCN, name, and address of every hospice that successfully met quality reporting program requirements for the fiscal year. Hospices are only considered compliant if they meet the standards for HIS and CAHPS reporting, as codified in § 418.312. Consumers can now access the Hospice APU compliance file from Care Compare, enabling them to determine if a particular hospice is compliant with CMS' quality reporting requirements.

G. Proposal for the January 2022 HH QRP Public Reporting Display Schedule With Fewer Than Standard Number of Quarters Due to COVID–19 Public Health Emergency Exemptions

1. Background and Statutory Authority

We include this Home Health proposal in this rule because we plan to resume public reporting for the HH QRP with the January 2022 refresh of Care Compare. In order to accommodate the exception of 2020 Q1 and Q2 data, we are proposing to resume public reporting using 3 out of 4 quarters of data for the January 2022 refresh. In order to finalize this proposal in time to release the required preview report related to the refresh, which we release 3 months prior to any given refresh (October 2021), we need the rule containing this proposal to finalize by October 2021.

The HH QRP is authorized by section 1895(b)(3)(B)(v) of the Act. Section 1895(b)(3)(B)(v)(II) of the Act requires that for 2007 and subsequent years, each HHA submit to the Secretary in a form and manner, and at a time, specified by the Secretary, such data that the Secretary determines are appropriate for the measurement of health care quality. To the extent that an HHA does not submit data in accordance with this clause, the Secretary shall reduce the home health market basket percentage increase applicable to the HHA for such year by 2 percentage points. As provided at section 1895(b)(3)(B)(vi) of the Act, depending on the market basket percentage increase applicable for a particular year, the reduction of that increase by 2 percentage points for failure to comply with the requirements of the HH QRP and further reduction of the increase by the productivity adjustment (except in 2018 and 2020) described in section 1886(b)(3)(B)(xi)(II) of the Act may result in the home health market basket percentage increase being less than 0.0 percent for a year, and may result in payment rates under the Home Health PPS for a year being less than payment rates for the preceding year. For more information on the policies we have adopted for the HH QRP, we refer readers to the following rules:

- CY 2007 HH PPS final rule (71 FR 65888 through 65891).
- CY 2008 HH PPS final rule (72 FR 49861 through 49864).
- CY 2009 HH PPS update notice (73 FR 65356).
- CY 2010 HH PPS final rule (74 FR 58096 through 58098).
- CY 2011 HH PPS final rule (75 FR 70400 through 70407).
- CY 2012 HH PPS final rule (76 FR 68574).

- CY 2013 HH PPS final rule (77 FR 67092).
- CY 2014 HH PPS final rule (78 FR 72297).
- CY 2015 HH PPS final rule (79 FR 66073 through 66074).
- CY 2016 HH PPS final rule (80 FR 68690 through 68695).
- CY 2017 HH PPS final rule (81 FR 76752).
- CY 2018 HH PPS final rule (82 FR 51711 through 51712).
- CY 2019 HH PPS final rule with comment period (83 FR 56547).
- CY 2020 HH PPS final rule (84 FR 60554 through 60611).
- CY 2021 HH PPS final rule (85 FR 70326 through 70328).

2. Public Display of Home Health Quality Data for the HH QRP

Section 1895(b)(3)(B)(v)(III) of the Act requires the Secretary to establish procedures for making HH QRP data, including data submitted under sections 1899B(c)(1) and 1899B(d)(1) of the Act, available to the public. Such public display procedures must ensure that HHAs have the opportunity to review the data that will be made public with respect to each HHA prior to such data being made public. Section 1899B(g) of the Act requires that data and information regarding PAC provider performance on quality measures and resource use or other measures be made publicly available beginning not later than 2 years after the applicable specified ''application date''.

We established our HH QRP Public Display Policy in the CY 2016 HH PPS final rule (80 FR 68709 through 68710). In that final rule, we noted that the procedures for HHAs to review and correct their data on a quarterly basis is performed through CASPER along with our procedure to post the data for the public on our Care Compare website. We have communicated our public display schedule, which supports our Public Display Policy, on our websites whereby the quarters of data included are announced.

3. Proposal To Modify HH QRP Public Reporting To Address CMS' Guidance To Except Data During the COVID–19 PHE Beginning January 2022 Through July 2024

We are proposing to modify our public display schedule to display fewer quarters of data than what we previously finalized for certain HH QRP measures for the January 2022 refreshes. Under authority of section 319 of the PHS Act, the Secretary declared a PHE effective as of January 27, 2020. On March 13, 2020, the President declared a national state of emergency under the Stafford Act, effective March 1, 2020, allowing the Secretary to invoke section 1135(b) of the Act (42 U.S.C. 1320b–5) to waive or modify the requirements of titles XVIII, XIX, and XXI of the Act and regulations to the extent necessary to address the COVID–19 PHE. Many waivers and modifications were made effective as of March 1, 2020 in accordance with the President's declaration.[57]

On March 27, 2020, we sent a guidance memorandum under the subject title, ''Exceptions and Extensions for Quality Reporting Requirements for Acute Care Hospitals, PPS-Exempt Cancer Hospitals, Inpatient Psychiatric Facilities, Skilled Nursing Facilities, Home Health Agencies (HHAs), Hospices, Inpatient Rehabilitation Facilities, Long-Term Care Hospitals, Ambulatory Surgical Centers, Renal Dialysis Facilities, and MIPS Eligible Clinicians Affected by COVID–19'' to the MLN Connects Newsletter and Other Program-Specific Listserv Recipients,[58] hereafter referred to as the March 27, 2020 CMS Guidance Memorandum. In the March 27, 2020 CMS Guidance Memo, we granted an exception to the HH QRP reporting requirements under the HH QRP exceptions and extension requirements for Quarter 4 (Q4) 2019 (October 1, 2019 through December 31, 2019), Q1 2020 (January 1, 2020 through March 30, 2020), and Q2 2020 (April 1, 2020 through June 30, 2020). The HH QRP exception applied to the HH QRP Outcome and Assessment Information Set (OASIS)-based measures, claims-based measures, and HH CAHPS Survey. We discuss the impact to the OASIS and claims here, and discuss to the HH CAHPS further in section III.G. 4, Update on Use of Q4 2019 HH QRP Data and Data Freeze for Refreshes in 2021. For the OASIS, the exempted quarters are based upon admission and discharge assessments.

A subset of the HH QRP measures has been publicly displayed on Home Health Compare (HH Compare) since 2003. Under the current HH QRP public display policy, Home Health Compare uses 4 quarters of data to publicly display OASIS-based measures, and 4 or more quarters of data to publicly display claims-based measures. We use four rolling quarters of data to publicly display Home Health Care Consumer Assessment of Healthcare Providers and Systems (HHCAHPS) Survey measures on Care Compare. As of September 2020, HH QRP OASIS, claims-based, and HHCAHPS Survey measures are reported on the *www.medicare.gov's* Care Compare website. As of December 2020, the data is no longer reported on the *www.medicare.gov's* Home Health Compare website.

The exception granted under the March 27, 2020 CMS Guidance Memo impacted the HH QRP public display schedule. We will resume publicly displaying HH QRP claims-based measures in January 2022 based upon the quarters of data specified for each of the claims-based measures. Table 30 displays the original schedule for public reporting of OASIS and HHCAHPS Survey measures prior to the Q1 and Q2 2020 data impacted by the COVID–19 PHE.

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[57] Azar, A.M. (2020 March 15). *Waiver or Modification of Requirements Under Section 1135 of the Social Security Act.* Public Health Emergency. *https://www.phe.gov/emergency/news/healthactions/section1135/Pages/covid19-13March20.aspx.*

[58] (2020, March 27). *Exceptions and Extensions for Quality Reporting Requirements for Acute Care Hospitals, PPS-Exempt Cancer Hospitals, Inpatient Psychiatric Facilities, Skilled Nursing Facilities, Home Health Agencies, Hospices, Inpatient Rehabilitation Facilities, Long-Term Care Hospitals, Ambulatory Surgical Centers, Renal Dialysis Facilities, and MIPS Eligible Clinicians Affected by COVID–19.* Centers for Medicare & Medicaid Services. *https://www.cms.gov/files/document/guidance-memo-exceptions-and-extensions-quality-reporting-and-value-based-purchasing-programs.pdf.*

TABLE 30: Original Public Reporting Schedule with Refreshes

Quarter Refresh	HH Quarters in Original Schedule for Care Compare	HHCAHPS Survey Quarters in Original Schedule for Care Compare
October 2020	OASIS, ACH, & ED quality measure (QM): Q1 2019- Q4 2019 DTC, MSPB: Q1 2018- Q4 2019 (8) PPR: Q1 2017- Q4 2019 (12)	Q2 2019 – Q1 2020
*January 2021	OASIS, ACH, & ED QM: Q2 2019- Q1 2020 DTC, MSPB: Q1 2018- Q4 2019 (8) PPR: Q1 2017- Q4 2019 (12)	Q3 2019 – Q2 2020
*April 2021	OASIS, ACH & ED QM: Q3 2019- Q2 2020 DTC, MSPB: Q1 2018- Q4 2019 (8) PPR: Q1 2017- Q4 2019 (12)	Q4 2019 – Q3 2020
*July 2021	OASIS, ACH & ED QM: Q4 2019-Q3 2020 DTC, MSPB: Q1 2018- Q4 2019 (8) PPR: Q1 2017- Q4 2019 (12)	Q1 2020 – Q4 2020
*October 2021	OASIS, ACH & ED QM: Q1 2020- Q4 2020 DTC, MSPB: Q1 2019- Q4 2020 (8) PPR: Q1 2018- Q4 2020 (12)	Q2 2020 – Q1 2021
*January 2022	OASIS, ACH & ED QM: Q2 2020- Q1 2021 DTC, MSPB: Q1 2019 – Q4 2020 (8) PPR: Q1 2018 – Q4 2020 (12)	Q3 2020 – Q2 2021
†*April 2022	OASIS, ACH & ED QM: Q3 2020-Q2 2021 DTC, MSPB: Q1 2019 – Q4 2020 (8) PPR: Q1 2018 – Q4 2020 (12)	Q4 2020 - Q3 2021
†July 2022	OASIS, ACH & ED QM: Q4 2020-Q3 2021 DTC, MSPB: Q1 2019- Q4 2020 (8) PPR: Q1 2018- Q4 2020 (12)	Q1 2021 - Q4 2021
†October 2022	OASIS, ACH & ED QM: Q1 2021-Q4 2021 DTC, MSPB: Q1 2020- Q4 2021 (8) PPR: Q1 2019- Q4 2021 (12)	Q2 2021 - Q1 2022

†January 2023	OASIS, ACH & ED QM: Q2 2021-Q1 2022 DTC, MSPB: Q1 2020- Q4 2021 (8) PPR: Q1 2019- Q4 2021 (12)	Q3 2021 - Q2 2022
†April 2023	OASIS, ACH & ED QM: Q3 2021-Q2 2022 DTC, MSPB: Q1 2020- Q4 2021 (8) PPR: Q1 2019- Q4 2021 (12)	Q4 2021 - Q3 2022
†July 2023	OASIS, ACH & ED QM: Q4 2021-Q3 2022 DTC, MSPB: Q1 2020- Q4 2021 (8) PPR: Q1 2019- Q4 2021 (12)	Q1 2022-Q4 2022
††October 2023	OASIS, ACH, ED Use: Q1 2022-Q4 2022 DTC, MSPB: Q1 2021- Q4 2022 (8) PPR: Q1 2020- Q4 2022 (12)	Q2 2022 - Q1 2023
††January 2024	OASIS, ACH, ED Use: Q2 2022-Q1 2023 DTC, MSPB: Q1 2021- Q4 2022 (8) PPR: Q1 2020- Q4 2022 (12)	Q3 2022 -Q2 2023
††April 2024	OASIS, ACH, ED Use: Q3 2022-Q2 2023 DTC, MSPB: Q1 2021- Q4 2022 (8) PPR: Q1 2020- Q4 2022 (12)	Q4 2022-Q3 2023
†† July 2024	OASIS, ACH, ED Use: Q4 2022-Q3 2023 DTC, MSPB: Q1 2021- Q4 2022 (8) PPR: Q1 2020- Q4 2022 (12)	Q1 2023-Q4 2023
October 2024	OASIS, ACH, ED Use: Q1 2023-Q4 2023 DTC, MSPB: Q1 2022- Q4 2023 (8) PPR: Q1 2021- Q4 2023 (12)	Q2 2023 - Q1 2024

*Exceptions affect both OASIS and HHCAHPS Survey data for refresh; †Exceptions affect only HHCAHPS Survey measures and some claims-based measures for refresh; †† Exceptions affect only some claims-based measures.

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During the spring and summer of 2020, we conducted testing to inform decisions about publicly displaying HH QRP data for those refreshes which include data from the exception period of October 1, 2019 through June 30, 2020 (hereafter ''excepted data''). The testing helped us develop a plan for displaying HH QRP data that are as up-to-date as possible and that also meet scientifically-acceptable standards for publicly displaying those data. We believe that the plan allows us to provide consumers with helpful information on the quality of home health care, while also making the necessary adjustments to accommodate the exception granted to HHAs. The following sections provide the results of our testing for OASIS and claims and explain how we used the results to inform a proposal for accommodating excepted data in public reporting. HH CAHPS discussion is further in section III.G.4.

4. Update on Use of Q4 2019 HH QRP Data and Data Freeze for Refreshes in 2021

In the March 27, 2020 Guidance Memorandum, we stated that we should not include any PAC quality data that are greatly impacted by the exception granted in the quality reporting programs. Given the timing of the PHE onset, we determined that we would not use HH QRP OASIS, claims, or HHCAHPS data from Q1 and Q2 of 2020 for public reporting, and that we would assess the impact of the COVID–19 PHE on HH QRP data from Q4 2019. In the original schedule (Table 30), the October 2020 refresh included Q4 2019 measure based on OASIS and HHCAHPS data and is the last refresh before Q1 2020 data are included.

Before proceeding with the October 2020 refresh, we conducted testing to ensure that publicly displaying Q4 2019 data would still meet our standards despite granting an exception to HH QRP reporting requirements for Q4 2019. Specifically, we compared submission rates in Q4 2019 to average rates in other quarters to assess the extent to which HHAs had taken advantage of the exemption, and thus the extent to which data and measure scores might be affected. We observed that the quality data submission rate for Q4 2019 was in fact 0.4 percent higher than the previous calendar year (Q4 2018). We note that Q4 2019 ended before the onset of the COVID–19 pandemic in the U.S. Thus, we proceeded with including Q4 2019 data in measure calculations for the October 2020 refresh.

Because we excepted HHAs from the HH QRP reporting requirements for Q1 and Q2 2020, we did not use OASIS, claims, or HHCAHPS data from these quarters. All refreshes, during which we decided to hold this data constant, included more than 2 quarters of data that were affected by the CMS-issued COVID reporting exceptions, thus we did not have an adequate amount of data to reliably calculate and publicly display provider measures scores.

Consequently, we determined to freeze the data displayed, that is, holding data constant after the October 2020 refresh without subsequently updating the data through October 2021. We communicated this in a Public Reporting Tip Sheet, which is located at: *https://www.cms.gov/files/document/hhqrp-pr-tip-sheet081320final-cx-508.pdf.*

5. Proposal To Use the COVID–19 PHE Affected Reporting (CAR) Scenario To Publicly Display Certain HH QRP Measures (Beginning in January 2022 through July 2024) Due to the COVID–19 PHE

We are also proposing to use the CAR scenario for refreshes for January 2022 for OASIS and for refreshes from January 2022 through July 2024 for some claims-based measures. There are several forthcoming HH QRP refreshes

for which the original public reporting schedule included other quarters from the quality data submission exception. These refreshes for claims-based measures, OASIS-based measures, and for HHCAHPS Survey measures are outlined above (Table 30).

Because October 2020 refresh data will become increasingly out-of-date and thus less useful for the public, we analyzed whether it would be possible to use fewer quarters of data for one or more refreshes and thus reduce the number of refreshes that continue to display October 2020 data. Using fewer quarters of more up-to-date data requires that: (1) A sufficient percentage of HHAs would still likely have enough OASIS data to report quality measures (reportability); and (2) using fewer quarters of data to calculate measures would likely produce similar measure scores for HHAs, and thus not unfairly represent the quality of care HHAs provided during the period reported in a given refresh (reliability).

To assess these criteria, we conducted reportability and reliability analysis excluding the COVID–19 affected quarters of data in a refresh instead of the standard number of quarters of data for reporting for each HH QRP measure to model the impact of not using Q1 or Q2 2020. Specifically, we used historical data to calculate HH quality measures under two scenarios:

- Standard Public Reporting (SPR) Scenario: We used HH QRP data from CY 2017 through 2019 to build the standard reported measures, to represent as a proxy CY 2020 public reporting in the absence of the temporary exemptions from the submission of OASIS quality data, as the basis for comparing simulated alternatives. This entails using 4 quarters of CY 2019 HH QRP data to model the OASIS based measures that are normally calculated using 4 quarters of data. This also entailed using 4 quarters of HH QRP data from CY 2019 for the all-cause hospitalization and emergency department use claims-based measures, 8 quarters of HH QRP data from CY2018 and CY2019 for Medicare spending per beneficiary (MSPB) and discharge to community (DTC) claims-based measures; and or 12 quarters from January 2017 to December 2019 for the potentially preventable readmission claims-based measure.
- COVID–19 Affected Reporting (CAR) Scenario: We calculated OASIS-based measures using 3 quarters of HH QRP CY 2019 data to simulate using only Q3 2020, Q4 2020, and Q1 2021 data for public reporting. We calculated claims-based measures using HH QRP CY 2017 to 2019 data, to simulate using the most recent data while excluding the same quarters (Q1 and Q2) that are relevant from the PHE exception. We used 3 quarters of HH QRP data from CY 2019 for the all-cause hospitalization and emergency department use claims-based measures and 6 quarters of data from HH QRP CY 2018 and CY 2019 were used for both the Medicare spending per beneficiary and discharge to community claims-based measures. We used 10 quarters of HH QRP data from CY 2017 to 2019 to calculate the CAR scenario for the potentially preventable readmissions claims-based measure. For both claims and OASIS-based measures, the quarters used in our analysis were the most recently available data that exclude the same quarters (Q1 and Q2) as that are relevant from the PHE exception, and thus take seasonality into consideration.

The OASIS-based measures are based on the start of care and calculated using admission dates. Therefore, under the CAR scenario we excluded data for OASIS-based measures for HHA patient stays with admission dates in Q1 and Q2 2019. To assess performance in these scenarios, we calculated the reportability as the percent of HHAs meeting the 20-case minimum for public reporting (the public reporting threshold, or ''PRT''). We evaluated measure reliability using the Pearson and Spearman correlation coefficients, which assess the alignment of HHs measure scores between scenarios. To calculate the reliability results, we restricted the HHAs included in the SPR Scenario to those included in the CAR Scenario.

Testing results showed that using the CAR scenario would achieve scientifically acceptable quality measure scores for the HH QRP. As displayed in Table 31, the percentage of HHAs that met the public display threshold for the OASIS-based measure decreases by 5.5 percentage points or less for all but one QM, the Influenza Immunization for the Current Flu Season in the CAR scenario versus SPR scenario. CMS has traditionally used a reportability threshold of 70 percent, meaning at least 70 percent of HHAs are able to report at least 20 episodes for a given measure, as the standard to determine whether a measure should be publicly reported. By this standard, we consider a decrease of 5.5 percentage points or less scientifically acceptable. The change in reportability for the Influenza Immunization for the Current Flu Season measure is related to the seasonality of this measure, which includes cases that occur during the flu season only.

Under the CAR scenario, the January 2022 refresh data would cover Q3 and Q4 of 2020 and Q1 of 2021, which occur during the flu season. This simulation included Q2 through Q4 of 2019, which crosses the flu season. Thus, the reportability of the actual data used is likely to be better than this simulation. Therefore, in general, using CAR scenario for the OASIS and claims-based measures would achieve acceptable reportability for the HH QRP measures. Testing also yielded correlation coefficients above 0.85, indicating a high degree of agreement between HH measure scores when using the CAR scenario or the SPR scenario.

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TABLE 31: HH QRP Measure Results Under the SPR and CAR Scenarios

	Reportability			Reliability	
Measure Reference Name	**% providers meeting PRT (Standard Public Reporting, SPR Scenario)**	**% providers meeting PRT (COVID-19 Affected Reporting, CAR Scenario)**	**Change in % Providers meeting PRT**	**Pearson Correlation**	**Spearman Correlation**
Application of Percent of Long Term Care Hospital Patients with an Admission and Discharge Functional Assessment and a Care Plan that Addresses Function (NQF 2631)	86.2	81.9%	4.3%	.97	.91
Changes in Skin Integrity Post-Acute Care Pressure	80.9%	75.9%	5%	.85	.87

	Reportability			Reliability	
Measure Reference Name	**% providers meeting PRT (Standard Public Reporting, SPR Scenario)**	**% providers meeting PRT (COVID-19 Affected Reporting, CAR Scenario)**	**Change in % Providers meeting PRT**	**Pearson Correlation**	**Spearman Correlation**
Ulcers/Injuries					
Drug Regimen Review	86.2%	81.9%	4.3%	.99	.96
Percent of Residents Experiencing One or More Falls with Major Injury (NQF #0674)	86.1%	81.7%	4.4%	.89	.88
Influenza Immunization Received for Current Flu Season	81.9%	70.7%	11.2%	.92	.90
Timely Initiation of Care (NQF #0526)	86.2%	81.9%	4.3%	.97	.95
Improvement in Ambulation (NQF #0167)	80.4%	75.6%	4.8%	.98	.97
Improvement in Bed Transfer (NQF 175)	80.1%	75.2%	4.9%	.98	.97
Improvement in Bathing (NQF #0174)	80.8%	75.7%	5.1%	.98	.97
Improvement in Dyspnea	79.1%	73.6%	5.5%	.98	.97
Improvement in Management of Oral Medications (NQF #0176)	79.1%	73.8%	5.3%	.98	.97
Discharge to Community (DTC) (NQF 3477)	86.5	81.7	4.8%	.95	.96
Medicare Spending per Beneficiary (MSPB)	91.3	89.8	1.5%	.94	.94
Acute care Hospitalization (AH) (NQF #0171)	80.9	75.8	5.1%	.88	.87
Emergency Department Use (EDU) (NQF # 0173)	80.9	75.8	5.1%	.91	.90

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We are proposing to use the CAR scenario for the last of the refreshes affecting OASIS-based measures, which will occur in January 2022. We are also proposing to use the CAR scenario for refreshes from January 2022 through July 2024 for some claims-based measures.

Our proposal of the CAR scenario for the January 2022 refresh would allow us to begin displaying recent data in January 2022, rather than continue displaying October 2020 data (Q1 2019

through Q4 2019). We believe that updating the data in January 2022 by more than a year relative to the October 2020 freeze data can assist the public by providing more relevant quality data and allow CMS to display more recent HHA performance. Similarly, using fewer than standard numbers of quarters for claims-based measures that typically use eight or twelve months of data for reporting between January 2022 and July 2024 will allow us to begin providing more relevant data sooner. Our testing results indicate we can achieve these positive impacts while maintaining high standards for reportability and reliability. Table 32 and Table 33 summarize the comparison between the original schedule for public reporting with the revised schedule (that is, frozen data) and also with the proposed public display schedule under the CAR scenario (that is, using 3 quarters in the January 2022 refresh), for OASIS- and claims-based measures respectively.

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TABLE 32: Original, Revised, and Proposed Schedule for Refreshes Affected by COVID-19 PHE Exceptions for HH OASIS-based QMs

Quarter Refresh	OASIS Quarters in Original Schedule for Care Compare (number of quarters)	OASIS Quarters in revised/proposed Schedule for Care Compare (number of quarters)
October 2020	Q1 2019- Q4 2019 (4)	Q1 2019- Q4 2019 (4)
January 2021	Q2 2019- Q1 2020 (4)	Q1 2019- Q4 2019 (4)
April 2021	Q3 2019-Q2 2020 (4)	Q1 2019- Q4 2019 (4)
July 2021	Q4 2019- Q3 2020 (4)	Q1 2019- Q4 2019 (4)
October 2021	Q1 2020- Q4 2020 (4)	Q1 2019- Q4 2019 (4)
January 2022*	Q2 2020-Q1 2021 (4)	Q3 2020-Q1 2021 (3)

Note: The shades cells represent data frozen due to PHE related to COVID-19.
* OASIS data with 3 versus 4 quarters of data

TABLE 33: Original, Revised, and Example Schedule for Refreshes Affected by COVID-19 PHE Exceptions for HH Claims-based QMs

Quarter Refresh *Dates are for example only---Actual Dates will be provided sub-regulatory	Claims-based Quarters in Original Schedule for Care Compare (number of quarters)	Claims-based Quarters in revised/proposed Schedule for Care Compare (number of quarters) *Quarters are for example only---Actual Quarters will be provided sub-regulatory
October 2020	ACH, ED Use: Q1 2019- Q4 2019 (4) DTC, MSPB: Q1 2018- Q4 2019 (8) PPR: Q1 2017- Q4 2019 (12)	ACH, ED Use: Q1 2019- Q4 2019 (4) DTC, MSPB: Q1 2018- Q4 2019 (8) PPR: Q1 2017- Q4 2019 (12)
January 2021	ACH, ED Use: Q2 2019- Q1 2020 (4) DTC, MSPB: Q1 2018- Q4 2019 (8) PPR: Q1 2017- Q4 2019 (12)	ACH, ED Use: Q1 2019- Q4 2019 (4) DTC, MSPB: Q1 2018- Q4 2019 (8) PPR: Q1 2017- Q4 2019 (12)
April 2021	ACH, ED Use: Q3 2019-Q2 2020 (4) DTC, MSPB: Q1 2018- Q4 2019 (8) PPR: Q1 2017- Q4 2019 (12)	ACH, ED Use: Q1 2019- Q4 2019 (4) DTC, MSPB: Q1 2018- Q4 2019 (8) PPR: Q1 2017- Q4 2019 (12)
July 2021	ACH, ED Use: Q4 2019- Q3 2020 (4) DTC, MSPB: Q1 2018- Q4 2019 (8) PPR: Q1 2017- Q4 2019 (12)	ACH, ED Use: Q1 2019- Q4 2019 (4) DTC, MSPB: Q1 2018- Q4 2019 (8) PPR: Q1 2017- Q4 2019 (12)
October 2021	ACH, ED Use: Q1 2020- Q4 2020 (4) DTC, MSPB: Q1 2019- Q4 2020 (8) PPR: Q1 2018- Q4 2020 (12)	ACH, ED Use: Q1 2019- Q4 2019 (4) DTC, MSPB: Q1 2018- Q4 2019 (8) PPR: Q1 2017- Q4 2019 (12)
January 2022*	ACH, ED Use: Q2 2020-Q1 2021 (4) DTC, MSPB: Q1 2019- Q4 2020 (8) PPR: Q1 2018- Q4 2020 (12)	ACH, ED Use: Q3 2020-Q1 2021 (3) DTC, MSPB: Q1 2019- Q4 2019; Q3 2020 –Q4 2020 (6) PPR: Q1 2018-Q4 2019 Q3 2020 – Q4 2020 (10)
October 2022*	ACH, ED Use: Q1 2021-Q4 2021 (4) DTC, MSPB: Q1 2020- Q4 2021 (8) PPR: Q1 2019- Q4 2021 (12)	ACH, ED Use: Q1 2021-Q4 2021 (4) DTC, MSPB: Q3 2020 –Q4 2020 (6) PPR: Q1 2019-Q4 2019 Q3 2020 – Q4 2021 (10)
October 2023*	ACH, ED Use: Q1 2022-Q4 2022 (4) DTC, MSPB: Q1 2021- Q4 2022 (8) PPR: Q1 2020- Q4 2022 (12)	ACH, ED Use: Q1 2022-Q4 2022 (4) DTC, MSPB: Q1 2021- Q4 2022; (8) PPR: Q3 2020-Q4 2020 Q1 2021 – Q4 2022 (10)
October 2024†	ACH, ED Use: Q1 2023-Q4 2023 (4) DTC, MSPB: Q1 2022- Q4 2023 (8) PPR: Q1 2021- Q4 2023 (12)	ACH, ED Use: Q1 2023-Q4 2023 (4) DTC, MSPB: Q1 2022- Q4 2023 (8) PPR: Q1 2021- Q4 2023 (12)

Note: The shades cells represent data frozen due to PHE related to COVID-19. DTC, MSPB and PPR measures are updated annually in October.

* Refreshes with few quarters of certain claims data.

† Refresh with the original public reporting schedule resuming for claims data.

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We are soliciting public comments on the proposal to use the CAR scenario to publicly report HH OASIS in January 2022 and claims-based measures beginning with the January 2022 through July 2024 refreshes.

6. Update to the Public Display of HHCAHPS Measures Due to the COVID–19 PHE Exception

Since April 2012, we have publicly displayed four quarters of HHCAHPS data every quarter, in the months of January, April, July, and October. The COVID–19 PHE Exception applied to Q1 and Q2 of 2020. Those excepted quarters cannot be publicly displayed and resulted in the freezing of the public display using Q1 2019 through Q4 2019 data for the refreshes that would have occurred from October 2020 through October 2021, as shown in Table 34. Beginning with January 2022, we will resume reporting four quarters of HHCAHPS data. The data for the January 2022 refresh are Q3 2020 through Q2 2021. These are the same quarters that would have been publicly

displayed despite the COVID–19 PHE.
Table 34 summarizes this discussion.

TABLE 34: HHCAHPS Public Reporting Quarters During and After the Freeze

Refresh	Publicly Reported Quarters
Freeze:	Q1 2019 - Q4 2019
October 2020-October 2021*	Q1 2019 – Q4 2019
January 2022**	Q3 2020-Q2 2021
April 2022	Q4 2020-Q3 2021
July 2022	Q1 2021-Q4 2021
October 2022	Q2 2021-Q1 2022
January 2023	Q3 2021-Q2 2022
April 2023	Q4 2021-Q3 2022
July 2023	Q1 2022-Q4 2022
*The grey shading refers to the frozen quarters.	
**Resume rolling of most recent four rolling quarters of data. These are the same rolling quarters that would have displayed regardless of the COVID-19 PHE.	

IV. Requests for Information

A. Fast Healthcare Interoperability Resources (FHIR) in Support of Digital Quality Measurement in Post-Acute Care Quality Reporting Programs—Request for Information

1. Background

A goal of the HQRP is to improve the quality of health care for beneficiaries through measurement, transparency, and public reporting of data. The HQRP contributes to improvements in health care, enhancing patient outcomes, and informing consumer choice. In October 2017, we launched the Meaningful Measures Framework. This framework captures our vision to address health care quality priorities and gaps, including emphasizing digital quality measurement (dQM), reducing measurement burden, and promoting patient perspectives, while also focusing on modernization and innovation. The scope of the Meaningful Measures Framework has evolved to Meaningful Measure 2.0 to accommodate the changes in the health care environment, initially focusing on measure and burden reduction to include the promotion of innovation and modernization of all aspects of quality.[59] There is a need to streamline our approach to data collection, calculation, and reporting to fully leverage clinical and patient-centered information for measurement, improvement, and learning.

In alignment with the Meaningful Measure 2.0, we are seeking feedback on our future plans to define digital quality measures for the HQRP. We also are seeking feedback on the potential use of Fast Healthcare Interoperable Resources (FHIR) for dQMs within the HQRP aligning where possible with other quality programs. FHIR is an open source standards framework (in both commercial and government settings) created by Health Level Seven International (HL7®) that establishes a common language and process for all health information technology.

2. Definition of Digital Quality Measures

We are considering adopting a standardized definition of Digital Quality Measures (dQMs) in alignment across QRPs. We are considering in the future to propose the adoption within the HQRP the following definition: Digital Quality Measures (dQMs) are quality measures that use one or more sources of health information that are captured and can be transmitted electronically via interoperable

[59] Meaningful Measures 2.0: Moving from Measure Reduction to Modernization. Available at: *https://www.cms.gov/meaningful-measures-20-moving-measure-reduction-modernization.*

systems.[60] A dQM includes software that processes digital data to produce a measure score or measure scores. Data sources for dQMs may include administrative systems, electronically submitted clinical assessment data, case management systems, electronic health records (EHRs), instruments (for example, medical devices and wearable devices), patient portals or applications (for example, for collection of patient-generated health data), health information exchanges (HIEs) or registries, and other sources. As an example, the quality measures calculated from patient assessment data submitted electronically to CMS would be considered digital quality measures.

3. Use of FHIR for Future dQMs in HQRP

Over the past two years in other programs, we have focused on opportunities to streamline and modernize quality data collection and reporting processes, such as exploring HL7® FHIR® (*http://hl7.org/fhir*) for quality reporting programs. One of the first areas CMS has identified relative to improving our digital strategy is through the use of FHIR-based standards to exchange clinical information through application programming interfaces (APIs), allowing clinicians to digitally submit quality information one time that can then be used in many ways. We believe that in the future proposing such a standard within the HQRP could potentially enable collaboration and information sharing, which is essential for delivering high-quality care and better outcomes at a lower cost.

We are currently evaluating the use of FHIR based APIs to access assessment data collected and maintained through the Quality Improvement and Evaluation System (QIES) and internet QIES (iQIES) health information systems and are working with healthcare standards organizations to assure that their evolving standards fully support our assessment instrument content. Further, as more hospice providers are adopting EHRs including hospices, we are evaluating using the FHIR interfaces for accessing patient data (including standard assessments) directly from hospice EHRs. Accessing data in this manner could also enable the exchange of data for purposes beyond data reporting to CMS, such as care coordination further increasing the value of EHR investments across the healthcare continuum. Once providers map their EHR data to a FHIR API in standard FHIR formats it could be possible to send and receive the data needed for measures and other uses from their EHRs through FHIR APIs.

4. Future Alignment of Measures Across Reporting Programs, Federal and State Agencies, and the Private Sector

We are committed to using policy levers and working with stakeholders to achieve interoperable data exchange and to transition to full digital quality measurement in our quality programs. We are considering the future potential development and staged implementation of a cohesive portfolio of dQMs across our regulated programs, including HQRP, agencies, and private payers. This cohesive portfolio would require, where possible, alignment of: (1) Measure concepts and specifications including narrative statements, measure logic, and value sets, and (2) the individual data elements used to build these measure specifications and calculate the measures. Further, the required data elements would be limited to standardized, interoperable elements to the fullest extent possible; hence, part of the alignment strategy will be the consideration and advancement of data standards and implementation guides for key data elements. We would coordinate closely with quality measure developers, Federal and state agencies, and private payers to develop and to maintain a cohesive dQM portfolio that meets our programmatic requirements and that fully aligns across Federal and state agencies and payers to the extent possible.

We intend this coordination to be ongoing and allow for continuous refinement to ensure quality measures remain aligned with evolving healthcare practices and priorities (for example, patient reported outcomes (PROs), disparities, care coordination), and track with the transformation of data collection. This includes conformance with standards and health IT module updates, future adoption of technologies incorporated within the ONC Health IT Certification Program and may also include standards adopted by ONC (for example, standards-based APIs). The coordination would build on the principles outlined in HHS' Nation Health Quality Roadmap.[61]

It would focus on the quality domains of safety, timeliness, efficiency, effectiveness, equitability, and patient-centeredness. It would leverage several existing Federal and public-private efforts including our Meaningful Measures 2.0 Framework; the Federal Electronic Health Record Modernization (DoD/VA); the Core Quality Measure Collaborative, which convenes stakeholders from America's Health Insurance Plans (AHIP), CMS, NQF, provider organizations, private payers, and consumers and develops consensus on quality measures for provider specialties; and the NQF-convened Measure Applications Partnership (MAP), which recommends measures for use in public payment and reporting programs. We would coordinate with HL7's ongoing work to advance FHIR resources in critical areas to support patient care and measurement such as social determinants of health. Through this coordination, we would identify which existing measures could be used or evolved to be used as dQMs, in recognition of current healthcare practice and priorities.

This multi-stakeholder, joint Federal, state, and industry effort, made possible and enabled by the pending advances towards interoperability, would yield a significantly improved quality measurement enterprise. The success of the dQM portfolio would be enhanced by the degree to which the measures achieve our programmatic requirements as well as the requirements of other agencies and payers.

5. Solicitation of Comments

We seek input on the following steps that would enable transformation of CMS' quality measurement enterprise to be fully digital:

a. What EHR/IT systems do you use and do you participate in a health information exchange (HIE)?

b. How do you currently share information with other providers and are there specific industry best practices for integrating SDOH screening into EHR's?

c. What ways could we incentivize or reward innovative uses of health information technology (IT) that could reduce burden for post-acute care settings, including but not limited to hospices?

d. What additional resources or tools would post-acute care settings, including but not limited to hospices and health IT vendors find helpful to support testing, implementation, collection, and reporting of all measures using FHIR standards via secure APIs to reinforce the sharing of patient health information between care settings?

e. Would vendors, including those that service post-acute care settings, including but not limited to hospices, be interested in or willing to participate in pilots or models of alternative approaches to quality measurement that

[60] Definition taken from the CMS Quality Conference 2021.

[61] Department of Health and Human Services. National Health Quality Roadmap. May 15, 2020. Available at: *https://www.hhs.gov/sites/default/files/national-health-quality-roadmap.pdf.*

would align standards for quality measure data collection across care settings to improve care coordination, such as sharing patient data via secure FHIR API as the basis for calculating and reporting digital measures?

f. What could be the potential use of FHIR dQMs that could be adopted across all QRPs?

We plan to continue working with other agencies and stakeholders to coordinate and to inform our transformation to dQMs leveraging health IT standards. While we will not be responding to specific comments submitted in response to this Request for Information in the FY 2022 Hospice final rule, we will actively consider all input as we develop future regulatory proposals or future sub-regulatory policy guidance. Any updates to specific program requirements related to quality measurement and reporting provisions would be addressed through separate and future notice- and-comment rulemaking, as necessary.

B. Closing the Health Equity Gap in Post-Acute Care Quality Reporting Programs—Request for Information

1. Background

Significant and persistent inequities in health outcomes exist in the United States. In recognition of persistent health disparities and the importance of closing the health equity gap, we request information on expanding several related CMS programs to make reporting of health disparities based on social risk factors and race and ethnicity more comprehensive and actionable for providers and patients. Belonging to a racial or ethnic minority group; living with a disability; being a member of the lesbian, gay, bisexual, transgender, and queer (LGBTQ+) community; or being near or below the poverty level, is often associated with worse health outcomes.[62] [63] [64] [65] [66] [67] [68] [69] Such disparities in health outcomes are the result of number of factors, but importantly for CMS programs, although not the sole determinant, poor access and provision of lower quality health care contribute to health disparities. For instance, numerous studies have shown that among Medicare beneficiaries, racial and ethnic minority individuals often receive lower quality of care, report lower experiences of care, and experience more frequent hospital readmissions and operative complications.[70] [71] [72] [73] [74] [75] Readmission rates for common conditions in the Hospital Readmissions Reduction Program are higher for black Medicare beneficiaries and higher for Hispanic Medicare beneficiaries with Congestive Heart Failure and Acute Myocardial Infarction.[76] [77] [78] [79] [80] Studies have also shown that African Americans are significantly more likely than white Americans to die prematurely from heart disease and stroke.[81] The COVID–19 pandemic has further illustrated many of these longstanding health inequities with higher rates of infection, hospitalization, and mortality among black, Latino, and Indigenous and Native American persons relative to white persons.[82] [83] As noted by the Centers for Disease Control ''long-standing systemic health and social inequities have put many people from racial and ethnic minority groups at increased risk of getting sick and dying from COVID–19''.[84] One important strategy for addressing these important inequities is by improving data collection to allow for better measurement and reporting on equity across our programs and policies.

We are committed to achieving equity in health care outcomes for our beneficiaries by supporting providers in quality improvement activities to reduce health inequities, enabling beneficiaries to make more informed decisions, and promoting provider accountability for health care disparities.[85] [86] For the purposes of this rule, we are using a definition of equity established in Executive Order 13985, as ''the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely

[62] Joynt KE, Orav E, Jha AK. Thirty-Day Readmission Rates for Medicare Beneficiaries by Race and Site of Care. JAMA. 2011; 305(7):675–681.

[63] Lindenauer PK, Lagu T, Rothberg MB, et al. Income Inequality and 30 Day Outcomes After Acute Myocardial Infarction, Heart Failure, and Pneumonia: Retrospective Cohort Study. British Medical Journal. 2013; 346.

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[65] Polyakova, M., et al. Racial Disparities In Excess All-Cause Mortality During The Early COVID–19 Pandemic Varied Substantially Across States. Health Affairs. 2021; 40(2): 307–316.

[66] Rural Health Research Gateway. Rural Communities: Age, Income, and Health Status. Rural Health Research Recap. November 2018.

[67] *https://www.minorityhealth.hhs.gov/assets/PDF/Update_HHS_Disparities_Dept-FY2020.pdf.*

[68] *www.cdc.gov/mmwr/volumes/70/wr/mm7005a1.htm.*

[69] Poteat TC, Reisner SL, Miller M, Wirtz AL. COVID–19 Vulnerability of Transgender Women With and Without HIV Infection in the Eastern and Southern U.S. Preprint. *medRxiv.* 2020;2020.07.21.20159327. Published 2020 Jul 24. doi:10.1101/2020.07.21.20159327.

[70] Martino, SC, Elliott, MN, Dembosky, JW, Hambarsoomian, K, Burkhart, Q, Klein, DJ, Gildner, J, and Haviland, AM. Racial, Ethnic, and Gender Disparities in Health Care in Medicare Advantage. Baltimore, MD: CMS Office of Minority Health. 2020.

[71] Guide to Reducing Disparities in Readmissions. CMS Office of Minority Health. Revised August 2018. Available at: *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/OMH_Readmissions_Guide.pdf.*

[72] Singh JA, Lu X, Rosenthal GE, Ibrahim S, Cram P. Racial disparities in knee and hip total joint arthroplasty: An 18-year analysis of national Medicare data. Ann Rheum Dis. 2014 Dec;73(12):2107–15.

[73] Rivera-Hernandez M, Rahman M, Mor V, Trivedi AN. Racial Disparities in Readmission Rates among Patients Discharged to Skilled Nursing Facilities. J Am Geriatr Soc. 2019 Aug;67(8):1672–1679.

[74] Joynt KE, Orav E, Jha AK. Thirty-Day Readmission Rates for Medicare Beneficiaries by Race and Site of Care. JAMA. 2011;305(7):675–681.

[75] Tsai TC, Orav EJ, Joynt KE. Disparities in surgical 30-day readmission rates for Medicare beneficiaries by race and site of care. Ann Surg. Jun 2014;259(6):1086–1090.

[76] Rodriguez F, Joynt KE, Lopez L, Saldana F, Jha AK. Readmission rates for Hispanic Medicare beneficiaries with heart failure and acute myocardial infarction. Am Heart J. Aug 2011;162(2):254–261 e253.

[77] Centers for Medicare and Medicaid Services. Medicare Hospital Quality Chartbook: Performance Report on Outcome Measures; 2014.

[78] Guide to Reducing Disparities in Readmissions. CMS Office of Minority Health. Revised August 2018. Available at: *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/OMH_Readmissions_Guide.pdf.*

[79] Prieto-Centurion V, Gussin HA, Rolle AJ, Krishnan JA. Chronic obstructive pulmonary disease readmissions at minority-serving institutions. Ann Am Thorac Soc. Dec 2013;10(6):680–684.

[80] Joynt KE, Orav E, Jha AK. Thirty-Day Readmission Rates for Medicare Beneficiaries by Race and Site of Care. JAMA. 2011;305(7):675–681.

[81] HHS. Heart disease and African Americans. (March 29, 2021). *https://www.minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlid=19.*

[82] *https://www.cms.gov/files/document/medicare-covid-19-data-snapshot-fact-sheet.pdf.*

[83] Ochieng N, Cubanski J, Neuman T, Artiga S, and Damico A. Racial and Ethnic Health Inequities and Medicare. Kaiser Family Foundation. Februray 2021. Available at: *https://www.kff.org/medicare/report/racial-and-ethnic-health-inequities-and-medicare/.*

[84] *https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html.*

[85] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/Downloads/CMS-Quality-Strategy.pdf.*

[86] Report to Congress: Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014 Strategic Plan for Accessing Race and Ethnicity Data. January 5, 2017. Available at *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Research-Reports-2017-Report-to-Congress-IMPACT-ACT-of-2014.pdf.*

affected by persistent poverty or inequality.'' [87] We note that this definition was recently established by the current administration, and provides a useful, common definition for equity across different areas of government, although numerous other definitions of equity exist.

Our ongoing commitment to closing the equity gap in CMS quality programs is demonstrated by a portfolio of programs aimed at making information on the quality of health care providers and services, including disparities, more transparent to consumers and providers. The CMS Equity Plan for Improving Quality in Medicare aims to support Quality Improvement Networks and Quality Improvement Organizations (QIN–QIOs); Federal, state, local, and tribal organizations; providers; researchers; policymakers; beneficiaries and their families; and other stakeholders in activities to achieve health equity. The CMS Equity Plan includes three core elements: (1) Increasing understanding and awareness of disparities; (2) developing and disseminating solutions to achieve health equity; and (3) implementing sustainable actions to achieve health equity.[88] The CMS Quality Strategy and Meaningful Measures Framework [89] include elimination of racial and ethnic disparities as a fundamental principle. Our ongoing commitment to closing the health equity gap in the HQRP is demonstrated by the sharing of information from the Medicare PAC PUF on Care Compare and seeking to adopt through future rulemaking aspects of the standardized patient assessment data elements (SPADEs) that apply to hospice which include several social determinants of health (SDOH).

We continue to work with Federal and private partners to better collect and leverage data on social risk to improve our understanding of how these factors can be better measured in order to close the health equity gap. Among other things, we have developed an Inventory of Resources for Standardized Demographic and Language Data Collection [90] and supported collection of specialized International Classification of Disease, 10th Edition, Clinical Modification (ICD–10–CM) codes for describing the socioeconomic, cultural, and environmental determinants of health. We continue to work to improve our understanding of this important issue and to identify policy solutions that achieve the goals of attaining health equity for all patients.

2. Solicitation of Public Comment

While hospice is not included in the Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014 (Pub. L. 113–185), we look at measures adopted based on that Act, like SPADES and if aspects apply to hospice then we would consider including it in the HQRP. This helps with continuity of care since patients may transition from different PAC settings to hospice and it would address a gap in hospice care. We are seeking comment on the possibility of expanding measure development, and adding aspects of SPADEs that could apply to hospice and address gaps in health equity in the HQRP. Any potential health equity data collection or measure reporting within a CMS program that might result from public comments received in response to this solicitation would be addressed through a separate notice- and-comment rulemaking in the future.

Specifically, we are inviting public comment on the following:

- Recommendations for quality measures, or measurement domains that address health equity, for use in the HQRP.
- Suggested parts of SDOH SPADEs adoption that could apply to hospice in alignment with national data collection and interoperable exchange standards. This could include collecting information on certain SDOH, including race, ethnicity, preferred language, interpreter services, health literacy, transportation and social isolation. CMS is seeking guidance on any additional items, including SPADEs that could be used to assess health equity in the care of hospice patients, for use in the HQRP.
- Ways CMS can promote health equity in outcomes among hospice patients. We are also interested in feedback regarding whether including facility-level quality measure results stratified by social risk factors and social determinants of health (for example, dual eligibility for Medicare and Medicaid, race) in confidential feedback reports could allow facilities to identify gaps in the quality of care they provide. (For example, methods similar or analogous to the *CMS Disparity Methods* [91] which provide hospital-level confidential results stratified by dual eligibility for condition-specific readmission measures currently included in the Hospital Readmission Reduction Program (84 FR 42496 through 42500)).
- Methods that commenters or their organizations use in employing data to reduce disparities and improve patient outcomes, including the source(s) of data used, as appropriate.
- Given the importance of structured data and health IT standards for the capture, use, and exchange of relevant health data for improving health equity, the existing challenges providers' encounter for effective capture, use, and exchange of health information, such as data on race, ethnicity, and other social determinants of health, to support care delivery and decision making.

While we will not be responding to specific comments submitted in response to this Request for Information in the FY 2022 Hospice Wage Index final rule, we intend to use this input to inform future policy development. We look forward to receiving feedback on these topics, and note for readers that responses to the RFI will not directly impact payment decisions. We also note our intention for an additional RFI or rulemaking on this topic in the future. We look forward to receiving feedback on these topics, and note for readers that responses to the RFI should focus on how they could be applied to the quality reporting program requirements.

V. Advancing Health Information Exchange

The Department of Health and Human Services (HHS) has a number of initiatives designed to encourage and support the adoption of interoperable health information technology and to promote nationwide health information exchange to improve health care and patient access to their health information. To further interoperability in post-acute care settings, the Centers for Medicare & Medicaid Services (CMS) and the Office of the National Coordinator for Health Information Technology (ONC) participate in the Post-Acute Care Interoperability Workgroup (PACIO) (*https://pacioproject.org/*) to facilitate collaboration with industry stakeholders to develop Fast Healthcare Interoperability Resources (FHIR)

[87] *https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-Federal-government.*

[88] Centers for Medicare & Medicaid Services Office of Minority Health. The CMS Equity Plan for Improving Quality in Medicare. *https://www.cms.gov/About-CMS/Agency-Information/OMH/OMH_Dwnld-CMS_EquityPlanforMedicare_090615.pdf.*

[89] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/MMF/General-info-Sub-Page.*

[90] Centers for Medicare and Medicaid Services. Building an Organizational Response to Health Disparities Inventory of Resources for Standardized Demographic and Language Data Collection. 2020. *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Data-Collection-Resources.pdf.*

[91] *https://qualitynet.cms.gov/inpatient/measures/disparity-methods/methodology.*

standards. These standards could support the exchange and reuse of patient assessment data derived from the minimum data set (MDS), inpatient rehabilitation facility patient assessment instrument (IRF–PAI), long term care hospital continuity assessment record and evaluation (LCDS), outcome and assessment information set (OASIS), and other sources, including HOPE if implemented in HQRP through future rulemaking. The PACIO Project has focused on FHIR implementation guides for functional status, cognitive status and new use cases on advance directives and speech, and language pathology. We encourage PAC provider and health IT vendor participation as these efforts advance.

The CMS Data Element Library (DEL) continues to be updated and serves as the authoritative resource for PAC assessment data elements and their associated mappings to health IT standards such as Logical Observation Identifiers Names and Codes and Systematized Nomenclature of Medicine. The DEL furthers CMS' goal of data standardization and interoperability. These interoperable data elements can reduce provider burden by allowing the use and exchange of healthcare data; supporting provider exchange of electronic health information for care coordination, person-centered care; and supporting real-time, data driven, clinical decision making. Standards in the Data Element Library (*https://del.cms.gov/DELWeb/pubHome*) can be referenced on the CMS website and in the ONC Interoperability Standards Advisory (ISA). The 2021 ISA is available at *https://www.healthit.gov/isa.*

The 21st Century Cures Act (Cures Act) (Pub. L. 114–255, enacted December 13, 2016) requires HHS to take new steps to enable the electronic sharing of health information ensuring interoperability for providers and settings across the care continuum. The Cures Act includes a trusted exchange framework and common agreement (TEFCA) provision [92] that will enable the nationwide exchange of electronic health information across health information networks and provide an important way to enable bi-directional health information exchange in the future. For more information on current developments related to TEFCA, we refer readers to *https://www.healthit.gov/topic/interoperability/trusted-exchange-framework-and-common-agreement* and *https://rce.sequoiaproject.org/.*

On May 1, 2020, ONC published a final rule in the **Federal Register** entitled ''21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program'' (85 FR 25642) that established policies related to information blocking as authorized under section 4004 of the 21st Century Cures Act. Information blocking is generally defined as a practice by a health IT developer of certified health IT, health information network, health information exchange, or health care provider that, except as required by law or specified by the Secretary of HHS as a reasonable and necessary activity, is likely to interfere with access, exchange, or use of electronic health information. The definition of information blocking includes a knowledge standard, which is different for health care providers than for health IT developers of certified health IT and health information networks or health information exchanges. A healthcare provider must know that the practice is unreasonable as well as likely to interfere with access, exchange, or use of electronic health information. To deter information blocking, health IT developers of certified health IT, health information networks and health information exchanges whom the HHS Inspector General determines, following an investigation, have committed information blocking, are subject to civil monetary penalties of up to $1 million per violation. Appropriate disincentives for health care providers are expected to be established by the Secretary through future rulemaking. Stakeholders can learn more about information blocking at *https://www.healthit.gov/curesrule/final-rule-policy/information-blocking.* ONC has posted information resources including fact sheets (*https://www.healthit.gov/curesrule/resources/fact-sheets*), frequently asked questions (*https://www.healthit.gov/curesrule/resources/information-blocking-faqs*), and recorded webinars (*https://www.healthit.gov/curesrule/resources/webinars*).

We invite providers to learn more about these important developments and how they could affect hospices.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this rule that contain information collection requirements.

A. ICRs Regarding Hospice QRP

The HQRP proposals would not change provider burden or costs.

- For the proposal to remove the 7 HIS measures from the HQRP, we do not propose any changes to the requirement to submit the HIS admission assessment since we continue to collect the data for these 7 HIS measures in order to calculate the more broadly applicable NQF # 3235, the Hospice and Palliative Care Composite Process Measure—HIS-Comprehensive Assessment Measure at Admission.
- The proposal to add the HCI also would not change provider burden or costs since it is a claims-based measure that CMS calculates from the Medicare claims data.
- Likewise, the proposal to publicly report the claims-based HVLDL quality measure would not result in reduced provider burden and related costs. The reduction in provider burden and costs occurred when we replaced the HIS-based HVWDII quality measure via the HIS–PRA package that OMB approved on February 16, 2021 (OMB Control Number: 0938–1153, CMS–10390).
- Finally, the Home Health Rider proposal would not change provider burden or costs since it only affects the number of quarters used in the calculation of certain claims-based measures for the public display for certain refresh cycles.

B. ICRs Regarding Hospice CoPs

We are proposing to revise the provisions at § 418.76(c)(1) that requires the hospice aide to be evaluated by observing an aide's performance of the task with a patient. This proposed revision is subject to the PRA; however, the information collection burden associated with the existing requirements at § 418.76(c)(1) are

[92] ONC, *Draft 2 Trusted Exchange Framework and Common Agreement, https://www.healthit.gov/sites/default/files/page/2019-04/FINALTEFCAQTF41719508version.pdf.*

accounted for under the information collection request currently approved OMB control number 0938–1067. The proposed revision's addition of the use of a ''pseudo patient'' allow for greater flexibility and may minimally reduce burden on the hospice. We request public comment on our determination that the time and effort necessary to comply with implementing the use of the pseudo-patient for hospice aide training at § 418.76(c)(1), may reduce burden on the provider.

We are also proposing to revise the provisions at § 418.76(h)(1)(iii) to state that if an area of concern is verified by the hospice during the on-site visit, then the hospice must conduct, and the hospice aide must complete, a competency evaluation related to the deficient and related skill(s) in accordance with § 418.76(c). We believe this could increase the speed with which hospices perform competency testing and could allow new aides to begin serving patients more quickly as these proposed changes will allow the hospice to focus on specific aide skills when a skill deficiency is assessed. In accordance with the implementing regulations of the PRA at 5 CFR 1320.3(b)(2), we believe that both the existing requirements and the proposed revisions to the requirements at § 418.76(h) are exempt from the PRA. We believe competency evaluations are a usual and customary business practice and we state as such in the information collection request associated with the Hospice Conditions of Participation (0938–1067). Therefore, we are not proposing to seek PRA approval for any information collection or recordkeeping activities that may be conducted in connection with the proposed revisions to § 418.76(h), but we request public comment on our determination that the time and effort necessary to comply with these evaluation requirements is usual and customary, and would be incurred by hospice staff even absent this regulatory requirement.

C. Submission of PRA-Related Comments

We have submitted a copy of this proposed rule to OMB for its review of the rule's information collection and recordkeeping requirements. The requirements are not effective until they have been approved by OMB.

We invite public comments on these information collection requirements. If you wish to comment, please identify the rule (CMS–1754–P) and, where applicable, the preamble section, and the ICR section. See this rule's **DATES** and **ADDRESSES** sections for the comment due date and for additional instructions and OMB control number 0938–1153 (CMS–10390) or OMB control number 0938–1067 (CMS–10277).

VII. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VIII. Regulatory Impact Analysis

A. Statement of Need

This proposed rule meets the requirements of our regulations at § 418.306(c) and (d), which require annual issuance, in the **Federal Register**, of the hospice wage index based on the most current available CMS hospital wage data, including any changes to the definitions of CBSAs or previously used MSAs, as well as any changes to the methodology for determining the per diem payment rates. This proposed rule would also update payment rates for each of the categories of hospice care, described in § 418.302(b), for FY 2022 as required under section 1814(i)(1)(C)(ii)(VII) of the Act. The payment rate updates are subject to changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act.

B. Overall Impacts

We estimate that the aggregate impact of the payment provisions in this proposed rule would result in an estimated increase of $530 million in payments to hospices, resulting from the hospice payment update percentage of 2.3 percent for FY 2022. The impact analysis of this proposed rule represents the projected effects of the changes in hospice payments from FY 2021 to FY 2022. Using the most recent complete data available at the time of rulemaking, in this case FY 2020 hospice claims data as of January 15, 2021, we apply the current FY 2021 wage index with the current labor shares. Using the same FY 2020 data, we apply the FY 2022 wage index and the current labor share values to simulate FY 2022 payments. We then apply a budget neutrality adjustment so that the aggregate simulated payments do not increase or decrease due to changes in the wage index. Then, using the same FY 2020 data, we apply the FY 2022 wage index and the current labor share values to simulate FY 2022 payments and compare simulated payments using the FY 2022 wage index and the proposed revised labor shares. We then apply a budget neutrality adjustment so that the aggregate simulated payments do not increase or decrease due to changes in the labor share values.

Certain events may limit the scope or accuracy of our impact analysis, because such an analysis is susceptible to forecasting errors due to other changes in the forecasted impact time period. The nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon hospices.

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with

economically significant effects ($100 million or more in any 1 year). We estimate that this rulemaking is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a RIA that, to the best of our ability presents the costs and benefits of the rulemaking.

C. Anticipated Effects

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The great majority of hospitals and most other health care providers and suppliers are small entities by meeting the Small Business Administration (SBA) definition of a small business (in the service sector, having revenues of less than $8.0 million to $41.5 million in any 1 year), or being nonprofit organizations. For purposes of the RFA, we consider all hospices as small entities as that term is used in the RFA. The Department of Health and Human Services practice in interpreting the RFA is to consider effects economically ''significant'' only if greater than 5 percent of providers reach a threshold of 3 to 5 percent or more of total revenue or total costs. The effect of the FY 2022 hospice payment update percentage results in an overall increase in estimated hospice payments of 2.3 percent, or $530 million. The distributional effects of the proposed FY 2022 hospice wage index do not result in a greater than 5 percent of hospices experiencing decreases in payments of 3 percent or more of total revenue. Therefore, the Secretary has determined that this rule will not create a significant economic impact on a substantial number of small entities. In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a MSA and has fewer than 100 beds. This rule will only affect hospices. Therefore, the Secretary has determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals (see table 34).

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. The 2021 UMRA threshold is $158 million. This rule is not anticipated to have an effect on state, local, or tribal governments, in the aggregate, or on the private sector of $158 million or more.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. We have reviewed this rule under these criteria of Executive Order 13132, and have determined that it will not impose substantial direct costs on state or local governments.

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on last year's proposed rule will be the number of reviewers of this proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this proposed rule. It is possible that not all commenters reviewed last year's rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. For these reasons we thought that the number of past commenters would be a fair estimate of the number of reviewers of this proposed rule.

Using the wage information from the Bureau of Labor Statistics (BLS) for medical and health service managers (Code 11–9111); we estimate that the cost of reviewing this rule is $114.24 per hour, including overhead and fringe benefits (*https://www.bls.gov/oes/current/oes_nat.htm*). This proposed rule consists of approximately 55,000 words. Assuming an average reading speed of 250 words per minute, it would take approximately 1.83 hours for the staff to review half of it. For each hospice that reviews the rule, the estimated cost is $209.06 (1.83 hour × $114.24). Therefore, we estimate that the total cost of reviewing this regulation is $11,080.18 ($209.06 × 53 reviewers).

D. Detailed Economic Analysis

1. Proposed Hospice Payment Update for FY 2022

The FY 2022 hospice payment impacts appear in Table 34. We tabulate the resulting payments according to the classifications (for example, provider type, geographic region, facility size), and compare the difference between current and future payments to determine the overall impact. The first column shows the breakdown of all hospices by provider type and control (non-profit, for-profit, government, other), facility location, facility size. The second column shows the number of hospices in each of the categories in the first column. The third column shows the effect of using the FY 2022 updated wage index data. This represents the effect of moving from the FY 2021 hospice wage index to the FY 2022 hospice wage index. The fourth column shows the effect of the proposed rebased labor shares. The aggregate impact of the changes in column three and four is zero percent, due to the hospice wage index standardization factor and the labor share standardization factor. However, there are distributional effects of the FY 2022 hospice wage index. The fifth column shows the effect of the hospice payment update percentage as mandated by section 1814(i)(1)(C) of the Act, and is consistent for all providers. The 2.3 hospice payment update percentage is based on the 2.5 percent inpatient hospital market basket update, reduced by a 0.2 percentage point productivity adjustment. The sixth column shows the effect of all the proposed changes on FY 2022 hospice payments. It is projected aggregate payments would increase by 2.3 percent; assuming hospices do not change their billing practices. As illustrated in Table 35, the combined effects of all the proposals vary by specific types of providers and by location.

In addition, we are providing a provider-specific impact analysis file, which is available on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Hospice-Regulations-and-Notices.html.* We note that simulated payments are based on utilization in FY 2020 as seen on Medicare hospice claims (accessed from the CCW in January of 2021) and only include payments related to the level of care and do not include payments related to the service intensity add-on.

As illustrated in Table 35, the combined effects of all the proposals vary by specific types of providers and by location.

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TABLE 35: Projected Impact to Hospices for FY 2022

Hospice Subgroup	Hospices	FY 2022 Updated Wage Data	FY 2022 Labor Share	FY 2022 Hospice Payment Update (%)	Overall Total Impact for FY 2022
All Hospices	4,957	0.0%	0.0%	2.3%	2.3%
Hospice Type and Control					
Freestanding/Non-Profit	600	0.0%	-0.1%	2.3%	2.2%
Freestanding/For-Profit	3,224	0.0%	0.0%	2.3%	2.3%
Freestanding/Government	40	0.2%	-0.1%	2.3%	2.4%
Freestanding/Other	365	-0.3%	0.1%	2.3%	2.1%
Facility/HHA Based/Non-Profit	366	0.0%	0.0%	2.3%	2.3%
Facility/HHA Based/For-Profit	193	0.1%	0.2%	2.3%	2.6%
Facility/HHA Based/Government	90	0.2%	0.5%	2.3%	3.0%
Facility/HHA Based/Other	79	0.4%	-0.2%	2.3%	2.5%
Subtotal: Freestanding Facility Type	4,229	0.0%	0.0%	2.3%	2.3%
Subtotal: Facility/HHA Based Facility Type	728	0.1%	0.0%	2.3%	2.4%
Subtotal: Non-Profit	966	0.0%	-0.1%	2.3%	2.2%
Subtotal: For Profit	3,417	0.0%	0.0%	2.3%	2.3%
Subtotal: Government	130	0.2%	0.2%	2.3%	2.7%
Subtotal: Other	444	-0.3%	0.0%	2.3%	2.0%
Hospice Type and Control: Rural					
Freestanding/Non-Profit	141	-0.2%	0.5%	2.3%	2.6%
Freestanding/For-Profit	348	-0.2%	0.6%	2.3%	2.7%
Freestanding/Government	18	0.2%	0.5%	2.3%	3.0%
Freestanding/Other	48	-0.2%	0.7%	2.3%	2.8%
Facility/HHA Based/Non-Profit	148	-0.3%	0.4%	2.3%	2.4%
Facility/HHA Based/For-Profit	44	0.3%	0.5%	2.3%	3.1%
Facility/HHA Based/Government	68	0.0%	0.5%	2.3%	2.8%
Facility/HHA Based/Other	45	0.2%	0.4%	2.3%	2.9%
Facility Type and Control: Urban					
Freestanding/Non-Profit	459	0.0%	-0.1%	2.3%	2.2%
Freestanding/For-Profit	2,876	0.1%	-0.1%	2.3%	2.3%
Freestanding/Government	22	0.2%	-0.1%	2.3%	2.4%
Freestanding/Other	317	-0.4%	0.0%	2.3%	1.9%
Facility/HHA Based/Non-Profit	218	0.1%	-0.1%	2.3%	2.3%
Facility/HHA Based/For-Profit	149	0.1%	0.2%	2.3%	2.6%
Facility/HHA Based/Government	22	0.4%	0.5%	2.3%	3.2%
Facility/HHA Based/Other	34	0.5%	-0.3%	2.3%	2.5%
Hospice Location: Urban or Rural					

Rural	860	-0.2%	0.5%	2.3%	2.6%
Urban	4,097	0.0%	-0.1%	2.3%	2.2%
Hospice Location: Region of the Country (Census Division)					
New England	156	-0.6%	-0.3%	2.3%	1.4%
Middle Atlantic	277	-0.7%	-0.2%	2.3%	1.4%
South Atlantic	577	0.3%	0.3%	2.3%	2.9%
East North Central	561	-0.2%	0.2%	2.3%	2.3%
East South Central	258	-0.2%	0.7%	2.3%	2.8%
West North Central	408	0.0%	0.3%	2.3%	2.6%
West South Central	967	-0.3%	0.4%	2.3%	2.4%
Mountain	503	0.1%	0.1%	2.3%	2.5%
Pacific	1,201	0.5%	-1.2%	2.3%	1.6%
Outlying	49	-1.3%	3.4%	2.3%	4.4%
Hospice Size					
0 - 3,499 RHC Days (Small)	1,082	0.1%	-0.3%	2.3%	2.1%
3,500-19,999 RHC Days (Medium)	2,227	0.0%	0.0%	2.3%	2.3%
20,000+ RHC Days (Large)	1,648	0.0%	0.0%	2.3%	2.3%

Source: FY 2020 hospice claims data from CCW accessed on January 15, 2021.
Note: The overall total impact reflects the addition of the individual impacts, which includes the overall wage index impact, the labor share impact as well as the 2.3% market basket update.

Region Key:
New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Middle Atlantic=Pennsylvania, New Jersey, New York;
South Atlantic=Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia
East North Central=Illinois, Indiana, Michigan, Ohio, Wisconsin
East South Central=Alabama, Kentucky, Mississippi, Tennessee
West North Central=Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
West South Central=Arkansas, Louisiana, Oklahoma, Texas
Mountain=Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming
P**acific**= Alaska, California, Hawaii, Oregon, Washington
Outlying=Guam, Puerto Rico, Virgin Islands

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E. Alternatives Considered

For the FY 2022 Hospice Wage Index and Rate Update proposed rule, we considered alternatives to the calculations of the wage index standardization factor and the labor share standardization factor. Typically, the wage index standardization factor is calculated using the most recent, complete hospice claims data available at the time of rulemaking. However, due to the COVID–19 PHE, we looked at using FY 2019 claims data to determine if there were significant differences between utilizing FY 2019 and FY 2020 claims data for the calculation of the wage index and labor share standardization factors. The wage index standardization factors and labor share standardization factors for each level of care calculated using the FY 2020 claims data that was available at the time of rulemaking did not show significant differences compared to those calculated using FY 2019 claims data. As such, the differences between using FY 2019 and FY 2020 claims data for rate-setting were minimal. Therefore, we will continue our practice of using the most recent, complete hospice claims data to available at the time of rulemaking to set payment rates.

F. Accounting Statement

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf*), in Table 36, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. Table 36 provides our best estimate of the possible changes in Medicare payments under the hospice benefit as a result of the policies in this proposed rule. This estimate is based on the data for 4,957 hospices in our impact analysis file, which was constructed using FY 2020 claims available in January 2021. All

expenditures are classified as transfers to hospices.

TABLE 36: Accounting Statement: Classification of Estimated Transfers and Costs, From FY 2021 to FY 2022

Category	Transfers
Annualized Monetized Transfers	$ 530 million*
From Whom to Whom?	Federal Government to Medicare Hospices

*The net increase of $530 million in transfer payments is a result of the 2.3 percent hospice payment update compared to payments in FY 2021.

G. Conclusion

We estimate that aggregate payments to hospices in FY 2022 will increase by $530 million as a result of the market basket update, compared to payments in FY 2021. We estimate that in FY 2022, hospices in urban areas will experience, on average, 2.2 percent increase in estimated payments compared to FY 2021. While hospices in rural areas will experience, on average, 2.6 percent increase in estimated payments compared to FY 2021. Hospices providing services in the Outlying and South Atlantic regions would experience the largest estimated increases in payments of 4.4 percent and 2.9 percent, respectively. Hospices serving patients in areas in the New England and Middle Atlantic regions would experience, on average, the lowest estimated increase of 1.4 percent in FY 2022 payments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below.

PART 418—HOSPICE CARE

■ 1. The authority citation for part 418 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 2. Section 418.3 is amended by adding definitions for ''Pseudo-patient'' and ''Simulation'' in alphabetical order to read as follows:

§ 418.3 Definitions.

* * * * *

Pseudo-patient means a person trained to participate in a role-play situation, or a computer-based mannequin device. A pseudo-patient must be capable of responding to and interacting with the hospice aide trainee, and must demonstrate the general characteristics of the primary patient population served by the hospice in key areas such as age, frailty, functional status, cognitive status and care goals.

* * * * *

Simulation means a training and assessment technique that mimics the reality of the homecare environment, including environmental distractions and constraints that evoke or replicate substantial aspects of the real world in a fully interactive fashion, in order to teach and assess proficiency in performing skills, and to promote decision making and critical thinking.

* * * * *

■ 3. Section 418.24 is amended by:
■ a. Revising paragraphs (c) introductory text and (c)(9);
■ b. Adding paragraph (c)(10);
■ c. Redesignating paragraphs (d) through (g) as paragraphs (e) through (h); and
■ d. Adding a new paragraph (d).

The revisions and additions read as follows:

§ 418.24 Election of hospice care.

* * * * *

(c) *Content of hospice election statement addendum.* For hospice elections beginning on or after October 1, 2020, in the event that the hospice determines there are conditions, items, services, or drugs that are unrelated to the individual's terminal illness and related conditions, the individual (or representative), non-hospice providers furnishing such items, services, or drugs, or Medicare contractors may request a written list as an addendum to the election statement. The election statement addendum must include the following:

* * * * *

(9) Name and signature of the individual (or representative) and date signed, along with a statement that signing this addendum (or its updates) is only acknowledgement of receipt of the addendum (or its updates) and not the individual's (or representative's) agreement with the hospice's determinations. If a non-hospice provider or Medicare contractor requests the addendum, the non-hospice provider or Medicare contractor are not required to sign the addendum.

(10) Date the hospice furnished the addendum.

(d) *Timeframes for the hospice election statement addendum.* (1) If the addendum is requested within the first 5 days of a hospice election (that is, in the first 5 days of the hospice election date), the hospice must provide this information, in writing, to the individual (or representative), non-hospice provider, or Medicare contractor within 5 days from the date of the request.

(2) If the addendum is requested during the course of hospice care (that is, after the first 5 days of the hospice election date), the hospice must provide this information, in writing, within 3 days of the request to the requesting individual (or representative), non-hospice provider, or Medicare contractor.

(3) If there are any changes to the plan of care during the course of hospice care, the hospice must update the addendum and provide these updates, in writing, to the individual (or representative) in order to communicate these changes to the individual (or representative).

(4) If the individual dies, revokes, or is discharged within the required timeframe for furnishing the addendum (as outlined in paragraphs (d)(1) and (2)

of this section, and before the hospice has furnished the addendum, the addendum would not be required to be furnished to the individual (or representative). The hospice must note the reason the addendum was not furnished to the patient and the addendum would become part of the patient's medical record if the hospice has completed it at the time of discharge, revocation, or death.

(5) If the beneficiary dies, revokes, or is discharged prior to signing the addendum (as outlined in paragraphs (d)(1) and (2) of this section), the addendum would not be required to be furnished to the individual (or representative). The hospice must note the reason the addendum was not signed and the addendum would become part of the patient's medical record.

* * * * *

■ 4. Section 418.76 is amended by revising paragraphs (c)(1) and (h)(1)(iii) to read as follows:

§ 418.76 Condition of participation: Hospice aide and homemaker services.

* * * * *

(c) * * *

(1) The competency evaluation must address each of the subjects listed in paragraph (b)(3) of this section. Subject areas specified under paragraphs (b)(3)(i), (iii), (ix), (x), and (xi) of this section must be evaluated by observing an aide's performance of the task with a patient or pseudo-patient. The remaining subject areas may be evaluated through written examination, oral examination, or after observation of a hospice aide with a patient or a pseudo-patient during a simulation.

* * * * *

(h) * * *

(1) * * *

(iii) If an area of concern is verified by the hospice during the on-site visit, then the hospice must conduct, and the hospice aide must complete, a competency evaluation of the deficient skill and all related skill(s) in accordance with paragraph (c) of this section.

* * * * *

■ 5. Section 418.309 is amended by revising paragraphs (a)(1) and (2) to read as follows:

§ 418.309 Hospice aggregate cap.

* * * * *

(a) * * *

(1) For accounting years that end on or before September 30, 2016 and end on or after October 1, 2030, the cap amount is adjusted for inflation by using the percentage change in the medical care expenditure category of the Consumer Price Index (CPI) for urban consumers that is published by the Bureau of Labor Statistics. This adjustment is made using the change in the CPI from March 1984 to the fifth month of the cap year.

(2) For accounting years that end after September 30, 2016, and before October 1, 2030, the cap amount is the cap amount for the preceding accounting year updated by the percentage update to payment rates for hospice care for services furnished during the fiscal year beginning on the October 1 preceding the beginning of the accounting year as determined pursuant to section 1814(i)(1)(C) of the Act (including the application of any productivity or other adjustments to the hospice percentage update).

* * * * *

■ 6. Section 418.312 is amended by revising paragraph (b) to read as follows:

§ 418.312 Data submission requirements under the hospice quality reporting program.

* * * * *

(b) *Submission of Hospice Quality Reporting Program data.* (1) Standardized set of admission and discharge items Hospices are required to complete and submit an admission Hospice Item Set (HIS) and a discharge HIS for each patient to capture patient-level data, regardless of payer or patient age. The HIS is a standardized set of items intended to capture patient-level data.

(2) Administrative data, such as Medicare claims data, used for hospice quality measures to capture services throughout the hospice stay, are required and automatically meet the HQRP requirements for § 418.306(b)(2).

(3) CMS may remove a quality measure from the Hospice QRP based on one or more of the following factors:

(i) Measure performance among hospices is so high and unvarying that meaningful distinctions in improvements in performance can no longer be made.

(ii) Performance or improvement on a measure does not result in better patient outcomes.

(iii) A measure does not align with current clinical guidelines or practice.

(iv) The availability of a more broadly applicable (across settings, populations, or conditions) measure for the particular topic.

(v) The availability of a measure that is more proximal in time to desired patient outcomes for the particular topic.

(vi) The availability of a measure that is more strongly associated with desired patient outcomes for the particular topic.

(vii) Collection or public reporting of a measure leads to negative unintended consequences other than patient harm.

(viii) The costs associated with a measure outweigh the benefit of its continued use in the program.

* * * * *

Dated: March 29, 2021.

Elizabeth Richter,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: April 6, 2021.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2021–07344 Filed 4–8–21; 4:15 pm]

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